

SIR JOHN SKENE, Lord BURGHILL

De verborum significatione

THE
EXPOSITION
OF
THE TERMES
AND
DIFFICILL WORDES,

Contained

In the foure Buiks of *Regiam Maiestatem*,
and uthers, in the Acts of Parliament, Infestments,
and used in practicque of this Realme,
and with divers Rules, and common
places, or principals of the Lawes.

Collected and exposed be *Master John Skene*, Clerke of our
Soveraine Lordis Register, Councell and Rolles.



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Инд стрия

Constitutive properties of the *Chlorophyceae* and *Chlorophyceae* Chlorellales.



To the Reader.



Have rather opened and schawen ane occa-
sion to the gnd Reader, to performe this
warke, then exponed, or declared the sa-
min; being ane matter nocht pleasand
in it self, nor treated be uthers of before:

Gif I have preased to do weil or attemp-
ted that, quibilk uthers maie accomplish and make perfite,
the profite and commoditie redonndis to thee; quha at thy
pleasure, may big upon this little ground and fundament.
Gifutherwais be error or ignorance, I have nocht satisfied
thy desire and expectation, Sit erranti medicina con-
fessio. For ane absolute memorie, and perfite knawledge,
in na thing erroneous, is proper to God, and not compe-
tent to man. Quhat euer I haue done, I did it not to offend
thee or displease any man, bot to provoke uthers to do bet-
ter, alwayes for thine awin weil, bewarre to reprehend my
doings flowand from ane benevolent, and gude mind: ex-
cept thou be assured to be reprehended of na man, quha cu-
mis after thee and fall censure thy doings. I am affrayed of
all Readers, for ilk man hes his awin Iudgement & opini-
on, quhairof their is als mony contrarieties, as diuersities
of persons. Advise therefore, & or thou do ony thing rash-
ly, gif thou may, transact and agree with all the posteritie,
that albeit thou doo alswel as Homer in his poesie: nane of
them be unto thee, successor or imitatour of Zoilus: so great

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is the varietie of ingeringes, and inclinations, that nane can
be sure fra reprebension. Reade therefore, and make thy
profise of gud thinges. Correcte modestie al errorrs, quhilke
are ignorant, and nocht wilfull. Eik al necessaries omitted.
Cut awaie al superfluities adiected. And quhatenevr
thou doe esteeme of me, as I doe of thee and of al, to quhais
knowledge, this my little labour sal happen to cum.
And swa,

*Vnde, Vale: si quid nouisti rectius istis,
Candidus imperti: si non, his utere mecum..*

THE



THE EXPOSITION OF THE DIFFICIL WORDS AND TERMES,

contained in the four buikes of
REGIAM MAIESTATEM
AND VTHERS.

In the Acts of Parliament, *infestments, and used in the Practicque of this Realme,*
with diverse Rules, and commoun
places, or principall groundes
of the Lawes.



Ctilia, Armour, Weapons, Harnishing.
Sta. 2. Robertis Bruyse, e.ordinatum. 27.
Quhair it is statute that ilke man-havand
Ten pounds worth of gudes, fall have
for the defence of his body and Realme,
and sufficient Acton, and basnet, with
gluifes of Plait, ane speir, ane sword: and
qua-ha-er he s nocht ane acton, and
basnet, fall have ane sufficient habirge
on, or ane Irone Lacke, ane Knapskall of Irone, and gluifes.

The pain
of them
qua cum
evil armed
to the
kings hoif.

De verborum significacione.

Swa that ilk man salbe readie *cum aletiis & barnefisiis suis*, under the paine of escheit of al his gudes, the ane halfe thereof to the King, and the vther halfe to his Maister and Lord. *Acton* ane auld French word, *Hocqueton*, quihilk corruptlie is pronounced *Oeton*, *sagum militare*. Sum affirmis *Acton* to be an auld kinde of armour, for preseruation of an mans bodie, maid of steill or Iron, quihilk covered his head, alweill as the rest of his bodie: Qghairot zit ar sum extant as auld mona-
mentes in the Hie-lands; Bot nocht dailie used, or worne. Vthers mair probablie alledgis *Acton*, to be ane forme of ar-
mour, quhilck coveris ane mans bodie (except his head) downe
to his knee, maid of Tafftie, Ledder, or Linning claih, studded
with caddes, & sticked very thick with threid, or silke of di-
verse coullors, and partial gilt, with spranges or streames of
Gold fulzie; And is commonlie used in time of battell under
the habirgeon, to save ane mans bodie, fra the schot of ane
arrowe: or fra the bruising of the straik of an sword. It is an
kinde of that abuilzement, quhilck in Latine is called *vestis vir-
gata*, *variis virgis, seu aureis lineis distincta*, & *variegata*, *ut est
illud Virgilius Aeneid. 8. Virgatis lucent sagulis.*

Responsalis. ACTORNATVS Lib. 4.c. *si quis defendens 46. actor*,
alienorum negotiorum gestor. vtherwais in the Lawes of this
Realme called *responsalis*, quha makis answer for ane vther in
judgement, speciallie for the defender Lib. 1.c. *Efo 27. Lib. 3.
c. Placita 12. cum seqq.* Like as *Prolocutor* is he quha speaks
for the persewer, as his forespeaker, Lib. 1.c. *consequenter 13.*
Alswa *Actornatus* is he quha dois ony thing in an vther mans
name or behalfe, As he quha competis for ane vther in courtes,
or Justice aire, to passe upon inqueistes, and serving of retoures
to the Kingis Chapel, or to give presence for him, quha sends
him. For he quha aucht baith sute, and presence in ony court,
suld not only send ane sutor to decide actions and causes, con-
forme to the Law, bot also suld compeir personally, or send
ane *Actornay*, quhilck also he suld do, quha aucht presence al-
lanerly, for ather he suld compeir, or ane *Actornay* for him,
with the seale of his Armes, the quhilck all frieholders, dwel-
land within the schireffdome, ar obllished to do in al Schireff
courts. Ia. 1. p. 9.c. 130. In justice aires, *Actornayes* suld be ho-
nest and sufficient persons of discretion. Ia. 1.p.3.c. 53. And
Actornatus

Actornatus Iustitiarii, is taken for the Justice depute. *Quoniam attach.c. propositus 61. ass. Reg. D. a. c. nullus 16.* Actornay is not only the procurator quha is sent: Bot also the procuratorie or *mandat* quhilk is given to him, and zit they are different, for ane procuratory is commonly maid be ane privie man: and ane Actorny, called *littera actornatus*, is granted be the King, or ony vther, havand Chappel. Stat. Rob. 3.c.vlt. generally, *in omnibus negotiis, loqueliis, & placitis motis seu movendis.* And therefore the Lord of the Session decerned ane requisition of ane aite, anent his mariage, maid be ane Actornay, to be nul. Because al sulk requisitiones suld be maid be the superiour personally, or be ane procurator, havand special power to that effect.

Adjournatus, ane French word, summoned or called to ane certaine daie, like as *Adiournementum* is called *un summōndes*, or *citatio, summonitio*, quhilk is defined, *certi dīci & loci exhibitio partibus, ad diem legalem, Quoniam attach.c. I. Preceptor mens Mathewus Wesenbecius in parat. Tit. de in ius vocando. Nu: 13. definit citationem, ut sit actus Iudicialis, seu Iudicis preparatoria, quo is quem coram sibi opus est, Iudicis mandato, legitime vocetur, Iuris experiendi causa. Et a/si a dicitur adjournata ad aliū certum diem, That is, continued to ane certaine daie. Lib. 4.c. Si petens 57. & curia dicitur respectuaria, That is contynued or respiteled Stat. 2. Rob. Br. Item quacunque 34. Chessanens in consuetudines Burgundie Rub. 1. sect. 6. verb. messiers & seruents. Nu. 88. multa (inquis) sunt nomina, que idem important, ut est *citatio, in ius vocatio, monitio, edictum, denuntiatio, conventio, & aliud, quod in vulgaris nostro dicimus, adiournementum.* *Adiournall* is the Justice aite, as ane aite of adjournal, so called, because it is maid in the Justice air. *vid. Iter.**

Advocatio Ecclesie, Is the richt of patronage, or the title and richt to present onie person to ane Kirk vacand, and nocht havand ane lauchfull Ecclesiastical person to rule and govern the samyn. Lib. 24 c. D. 6. 19. *Lic. 3. sequitur 30. Dicitur autem advocatio Ecclesie, teste Fr. Hotomanno, vel quia patronus aliquis Ecclesie, ratione sui iuris, advocat se ad eandem Ecclesiam: & assertit se in eam habere ius patronatus, eamque esse quasi sua clientis loco. Vel potius cum aliquis (tempore patronus) advocat Arowlon alium, iure suo, ad Ecclesiam vacantem, enique loco alidrum (ve- of Kirkes lnti,*

De verborum significacione.

A rowson *luti defuncti*) presentat, & quasi exhibet. In the English Lawes of Kyrkes, it is called, A yowson of Kirks.

Affidatio, Lib. 2^c. vnde 49. In the quhilke place, *Mutua affidatio*, is taken for ane muuall faith, trueth, and obligation of fidelitie, quhilke is betuixt the wife and the husbande. And sicklike, it signifies mutual league, and band of fidelitie, quhilke is betuixt the ouer-lord, and his vassall, quha are bound & obllished binc inde to vtheris, quhilke is called *mutua dominii & homagii fidelitatis connexio*. lib. 2^c. mutua. c. 68. In sikh sort, that how far the vassall is bound be treason of homage to his superiour: sa far the superiour is obllished to his vassall, except reverence and honor aliamerly: for the ane fuld obey and serve his maister, the vther, fuld interteine and defende his man. And the vassall fuld honour and reverencie his maister as his superiour. But the maister fuld not reverence the vassall: for like as of the law, there is na soveraintie, nor impyre amangis them that are parcs, conforme to the rule of the Lawe, *par in parem non habet imperium*. Even swa, the superiour is not obllished to mak onie reverence to his inferiour, bot fuld receive honour fra him. Item *Diffidatio*, (h.e. *inimicitarum capitalium denunciatio*, quhen ane defies ane vther, & gives up kindnesse with him) is contrair to *Affidatio*. Baith the ane and the vther is driven *a fidei vel fidelitate*, or fra ane word used in the fewes, *faida*, that is, battell, feid, injurie, hatred. As we comounlie say, deidly feid. And *famina dicitur faidam non facere*, gl. in *feid*, vlt. *de lege Contradi*. li. 2^c. de *feud*, be reason wemen be the Law, ar not subject to weir-fair, to battell, or proclamation maid for that cause.

Faida.

The unlaw of Courts.

Amerciamentum, or *Foresfaciun Curie*. The unlaw or amerciament of a court, for absence in lawfull tyme, for ane fault, trespass, or ony vther cause, as is manifest in the Register, in the action perisht be the Thesaurar, Cōrar the burgh of Perth, 16th Decembris 1540. The unlaw in the Chalmerslanis air or court, is fiftie schillings, and twe schillings to the Serlands of the burgh of ilke unlaw. The unlaw before the Justice on the North paiste of the water of Forth, aucht Kye, ane colpindach to the Crouner, and twa schillings to the Clerke: And in the South-side of the water of Forth, as in Louthian, & betuixt the water of Tyne and Forth, ten pundis, and ane colpindach,

colpindach, or threttie pennies to the Crownar, and twa schillings to the Clerk. In the Schireffe-court, it suld not exceed sexteene schillings, and twa schillings to the Clerk, or ane colpindach, or threttie pennies. In the Barronne court the sam lawes & un-lawes, suld be keiped, quhilks are vsed in the Schireffe court. In the court of them quha haldis of Barrones, and are called *milites*, their unlaw is halfe of their superiours unlaw. The unlaw of them quha ar called *subarmigeri*, is ane Kowe, ane zowe, or thre schillinges, *leg. Malc. Mak. c. 4.* The unlaw within Burgh suld not exceed the summe of aucht schillings, *leg. burg. c. foris factum 42.* The unlaw of them quha compeiris not in Parliament, being lauchfullic warned thereto, is ten punds. *Ia. 1. pri. Iulii 4. p. 4. c. 82. & p. 5. c. 99.* Quhilk is likewaies the unlaw of them quha compeiris not in generall Councelles, quhilk nowe is altered be the newe aste of Parlia-mente, maid be *Our Sovereine Lord King James the Sext 29. Julii. p. 11. c. 34.* quhair it is statute, that every Earle shall pay three hundredth pounds, ilk Lorde twa hundredth pounds, Ilk Prelate an hundredth pounds: And every Burgh an hundredth markes, in case it shall happen ony of them to be absent fra the Parliament.

Annexation. Ane Latine worde, quhilk signifies ane fast knitting and binding, as when ane thing is bund or knit with ane vther, and baith as it were vnitid togidder, and incorporat in ane. As quhen ony Lordships, lands, Castelles, Customes, Offices, Fischinges, or vther rents are annexed to the Croun, to remain perpetually therewith, quhilk is called *incorporatio*, *quando bona aliqua, veluti terra, rediguntur in corpus fisci, cum eorum scribitur Inventarium, manu publica, continens eorum nomina & qualitates, & ita ponuntur in numero rerum fiscalium 1. quando 3. & ibi gl. C. de bonis vacan. li. 10.* In the Lawes of this Realme, there is twa kinds of Annexation: The ane quhilk may be called *tacita*, quhairin the word of Annexation is nocht ex-premed, bot vther wordes equivalent therito. The vther, is *expressa*, quhilk conteiniſ manifest mention of Annexation or vniōn. The first forme is vsed in the daies of King *David the second, 6. Nov. 137.* quhair it is statute and ordaned, that all lands, rents, and possessiones, quhilks of auld pertained to the Crown, or the Kings domaine and propertie, suld all and haill,

and perpetually remaine in the hands and possession of the King, for his sustentation and living, without ony alienation theirof. And sikh-like, 27. Septem. 1367. with consent of the three Estates, it was statute for the Kings better sustentation, and living, that all rentes, fermes, kanes, customes, Forrests, of-fices, and vther emoluments quhatsumever: And also all lands, aswell the propertie, and vthers, in possession, quhairof King *Robert 1.* father to King *David the second*, deceased as of sie; and that all possessions, and landes quhilkis pertained to the richt and propertie of the Crown, the time of the saide King *Robert*, or of King *Alexander the third*, or of the said King *David the second*, fuld returne all and haill to the Crown, with all advocationis of Kirks, and all service perteyning theirto; To remaine perpetually with the Crowne, notwithstanding ony alienation theirof, maid to ony person, and that na disposition theirof be maid thereafter, without consent of the three Estates. And gif ony person had ony of the saides lands laboured with his awin pleuch: It was ordaned that he fuld pay as meikle ferme and dewty therefore, as the samin might gudly pay, or as ony vther lands als gud, and als meikle, vsed to pay. And sikhlike, al the great and final customes, and burrow mailes of the Realme are ordaned to abide and remain with the King, till his living, beane act maid be *Jam. 1. Parlia. 1. c. 8.* Of the second forme of Annexation quhairby landes, possessions and vthers, *per expressum*, are annexed, vnitid, and incorporate, diverse and findry examples are extant in the acts of Parliament of King *James the second*, *Parlia. 11. c. 4.* and of vthers maid theirafter. Lands, and vthers dewties, or possessions quhatsumever annexed to the Crowne, being annalied or disponed, na lauchful dissolution maid theirof. It is lesun to the King, nocte withstanding the said alienation to put his hand to the saides Of the p-^o lands, and take them backe againe to the Crown, *brevi manu*, without ony ordour or proces of law. And as concerning the profitis theirof, quhilkis are extant, pendentes, & *nendum consumpti*, the time of the said intermission, the King, or his comptroller may intromet therewith, in the samin maner, as he may intromet with the lands *Jure soli, quia fructus pendentes, & extantes censentur pars soli*. And touching the fructes, and profitis of the lands quhilkis are spended, and consumed;

Lands annexed and not dissolved, may not be annalied, fits of lands annexed wrangely and vnsafely. The

The King and his comptroller, acht and suld repeat the samin fra the possessours, and vptakers of the saids fructes, of all zeires of their intromission therewith, be way of action, because they ar consumed and spended. Quhilk deed consistand in *falso*, suld necessarily be proven be ordinar way of action. To the quhilk haill profites, the King hes gud right, in respect that of the Law, *mala fidei possessor*, can never acquire and conqueis to himselfe, ony fructes or profits, ather extante or consumed. And true it is, that al theys wha recevis ony infestment or vnlauchful disposition of the Kings annexed property, ar *mala fidei possessores*: they receiving the samin against the manifest Law of this Realme, the ignorance quhairof excusis na inhabitant of the samin. And mairover, true it is, that the foresaid forme of intromission with the Kings annexed lands, and repetition of the profitis theirof, hes bene in use and practik sen the making of the acts of Parliament thereanent: Like as in the beginning of the reign of King *James the Fourth*, 18. Jan. 1488. the landes and Lord-ship of *Brechin*, and *Nevar* were taken fra *David Earle of Crawford*, and ane tearme assignd to proove against him, the availe of the mailles and dewties of the saides Lands with the pertinentes, intromettet with be him, sen the time of the gift theirof. Item the King may intromet with his annexed propertie, and profitis theirof, quhidder he be *major* or *minor*. For gif there be na lauchful dissolution of the samin, he is aye as it were *minor* anent the said property. Al annexations ar perpetual, and induris continually, ay and quhil ane lauchful dissolution be maid be ony King: Induring the time of the quhilk dissolution, the annexation ceasis, and sleepis, and the dissolution being ended be deceas of the maker theirof, the said annexation beginnis to quicken & *quasi reviviscere*; In sik fort, that the King quha succeedis to the maker of the said dissolution may set na fewes of his annexed property, be vertue of the dissolution maid be his Predecessor, bot mon make ane new dissolution to the effect foresaid. *Annexation* *on is perpetually analied.*
Quhilk fault and vice, I find in divers and findry infestments of the propertie: And specially in the minority of King *James the Fifth*, quhilkis are wrangleously given be vertwe of the dissolution maid by King *James the Fourth*, his Father. *Vid. Dissolution.*

Annuell, ane word vfed in the practik of this Realme, for ane

zeirly revenue, or dewty, payed at certaine termes, ather legal, quhilks are called *termini legales vel legitimi*, prescribed and appointed be the law of this Realme, sik as Martin-mes and Whitsunday. Or conventional, as pleisir the parties til agree and appoint, be paſſion and contract, as betuixt *Zule* and *Candle-mes*, or ony vther time. In the Acts of Parliament maid by Queen *Mary* 4. Parlia. 29. Maii. c. 10. mention is maid of ground annuel, few annuel, and top annuel, quhairof I have red nathing in ony vther place: and am uncertain quhat they do signifie: bot referrs the samin to the judgement and opinion of the Reader.

Ground annuel. Alwayes, ground annuel is esteemed to be quhen the ground and property of ony land bigged or unbiggid, is disponed and annalied for ane annuel to be payed to the annalier thereof, or to ane

Top annuel. v. her person, sik as ony Chāiplaine or Priest. Top annuel, is ane certaine dewty, given and disponed furth of ony bigged tenement, or land, of the quhilk teneiment the property remainis with the disposer, and he is only obliſhied to pay the ſaid annuel.

Few annuel. Few annuel, is ather when the few mail, or dewty is disponed as ane zeirly annual. Or quhen the land, or tenement is ſette in few ferme heretably, for ane certaine annuel to be payed *nomine feudifirme*.

The annuel of Norway. The annuel of Norway, quhairof mention is maid in the actes of Parliament of King *James* the third, and in the Register of this Realme, was ane annuel of the ſumme of an hundredth market, ſterling money, quhilk the Kings of this Realme was obliſhied to pay zeirly to the King of Norway, for the cauſe after ſpecified. Because *Donald Ban*, brother to King *Malcolm Cammoir*, wrangeouly after the deceafe of his brother uſurped the richt of the Crown againſt his brother ſons, *Edgar*, *Alexander*, *David*, and vthers. And for helpe, and ſupply, gave all the Iles of *Scotland* to the King of Norway, quhairthrow, and for vther occaſiones, mony bluidy and cruel battels followed, until the battel of *Larges*, 3. Auguſt 1263. In the time of King *Alexander* the third. And of *Acho* King of Norway: Quha thereaſter in the ſamyn zeire, 22. Januar. departed from this life in *Orkney*. And the Scottis beand victorius, *Magnus* the fourth of that name, King of Norway, ſon to the ſaid *Acho*, maid peace and concord, with the ſaid King *Alexander*, in anno, 1266, and renunced, quite-clamed, and di charged all richt, or title quhilk he or his ſucceſſors had, or might have, or pretend to the Iles of *Scotland*.

Scotland. The King of Scotland payand therefore zeirly to the said *Magnus*, and his successors ane annuel of ane hundredth markes, sterling money. Quhilk contract and agreance was ratified, and confirmed be *Haquinus* King of Norway, the fift of that name, and *Robert* the first King of Scotland, in anno 1312. Bot at the last, the said annuel, with all the arrierages, and by-runs thereof, was discharged, and renounced simpliciter, in the contract of Mariage, betuixt King *James* the third, and *Margaret*, onely daughter to *Christianus* the first, King of Norway, Denmark, and Sweden 8. Septemb. 1468. Quhilk discharge is nocht only ratified, bot also renewed thereafter be the said *Christianus* 12. Maii. 1469. And likewise the sait King *James* the third, 24. Febr. 1483. commanded his Ambassadours send to the Paip, to desire confirmation of the said perpetual renunciation, and discharge of the contribution of the Iles.

Arage, vtherwaies Average, from *Averia*, quhilk signifies ane beast, as sal be hereafter exponed. And swa consequently Average, signifies service, quhilk the tennent aucht to his master, be horse, or cariage of horse, 18. Jan. 1501. *John Stewart* contrair *William Blair*. In the act of Parliament Ia. 4. p. 2. c. 10. It is written *Avarage*: and like-waies, in the indenture at *Perth*, pen. Mart. 1371. betuixt *Robert Stewart* Earle of *Menteith* upon the ane parte, and Dame *Isabel* Countes of *Fife*, on the vther paire, it is plainly written, *cum Avaragis & Cariagis*. In the quhilk Indenture, the said *Isabel*, dauchter and aire to *Duncane* Earle of *Fife*, and spouse to *Walter Stewart*, brother to the said *Robert*, in time of her Widuitie, after the decease of her said husband, obli- *Isabel Comyn*, fished her, to resigne the said Earledom of *Fife*, in the Kings hands, *ville of Fife*, in the favour of the said Earle, for new heritabil infestment theirof, to be given to him. The quhilk Indenture is subscrived be *Ioannes Rollo*, quha was Secretary to the said Earle. And conforme theirof, resignation was maid: for the quhilk scho recei- ved zeirly for her sustentation, ane hundred, fourty five punds, sterling money. Like as also the said *Isabel*, 12. Junii, 1389, re-signed *ad perpetuam remanentiam*, in the hands of King *Robert* the third, the Barony of *Strathurd*, *Strabruan*, *Discher*, *Toyer*, with the Ile of *Tay*, lyand within the Schiref-dome of *Perth*. The Barony of *Cowll*, and *Oneill*, with the fortalice theirof, and patronage of Kirk of *Kincardin*, within the Schirefdome of *Aber-* *dene*,

Sundrie
lands per-
taining to
the Crown.

dene, the Baronies of *Crundail* and *Affin*, within the Schirefdome of *Innerne*, the lands of *Strahovic* and *Abbrandoly*, within the Schirefdome of *Bamf*. The lands of *Legyacy*, within the Schirefdome of *Perth*, the Barony of *Calder*, within the Constabulary of *Linlithcow*, and Schirefdome of *Edinburgh*, and the lands of *Kellensyth*, within the Schirefdome of *Striviling*. This I thocht gud to advertise the Reader how the Earledome of *Fife* and vthers lands foirsaid, pertained to the Crown. Duke *Murdo* son to the said Earle of *Fife*, being forefaltor be King *James* the first, 1424. The said Earledome was decerned to remaine perpetually with the Crown, like as it dois, as ane speciaill part of the annexed property. As also the Lord-ship of *Methuen*, within the Schirefdome of *Perth*, and the Barony of *Kelly*, within the Schirefdome of *Forfar*, did fall in the hands of King *Robert* the first, be domine of forefaltour pronounced against Schir *Roger Mowbray* Knicht.

Arrendare, ane Spanish word, commonly used in chartours and infestments of this Realme, in Latin, *locare seu rem aliquam utendam, frumentam, non gratis, sed certa mercede interveniente concedere*. For conforme to the French, *rent* is ane certaine dewty, as annuell rent, and *arrentare* and theirfra *arrendare*, *quasi ad certum rentum seu redditum dimittere*, to set and give lands or tene-ments to ony for ane zeirly duety.

Arreragium, or properly *Arrieragium*, an French word, *arrier*, bakward : in Latine *retrò*, as *Iamais arrier*, used be the Earls of *Angus* in their Armes, to quhom it perteines to fecht the Kingis wantgard, as of auld it did appertain to *Makduff* Earle of *Fife*, as writis *Hector Boëtius*. *Arrieragium firmarum*, signifies the by-run annuel, mailes, fermes, profits or dewties of ony tenement, or lands, the quhilk restis upon the samin unpayed, *Quoniam attach. o. si tenementum. 27. i.e. Burg. c. si quis voluerit. 156.*

1. *Affisa*, ane French word, quhilk signifies properle fitting, or Session, and hes divers vthers significations in the Lawes of this Realme : for *affisa* is taken for ane constitution, ordinance or law. *Lib. 3. c. sequens. 23.* quhair it is called *recognitio*. And *Lib. 1. c. si non 23.* mention is maid of ane effonzie, or excuse, conforme to the Law and affise of the land. And *affisa* is called ane constitution, law or statute. *Lib. 4. c. die lune 13. as affisa regis*

David

David. Stat. Alex. c. *assis/a* 18. And *assisatum* signifies statute, or ordaned. St. 2. Ro. Br. c. Item *ordinatum* 26. King David maid an assise, or constitution of him quha was accused in judgement, and clenged, for the death of his wife, *assis/a Reg. D a. c. si quis velis* 33. *Affisa terra*, is taken for the Law and constitution of the Land. Lib. 4. c. *si vir.* 16. c. *sciendum* 64. *assisam infringere*, is to violate and transgres the Law. And *assis/a* of King James the first, of weights and measures maid at *Perth*. 11. Mart, and the first zeir of his reigne. *Iuxta affisam Lib. 2. c. dicitur autem* 74. is conforme to the law, or *Iuxta legem*, is conforme to the time prescribed be the Law, *Lib. 3. c. sequens* 33. *in fin.* Item, *assis/a* is called ane measure, or certaine quantity, as the barrell bind of *Salmond* suld keepe and conteine the assise and measure of fourteene gallons. Ia. 3. 1. Octob. Parl. 14. c. 1 10. and all *Salmond* suld be packed in barrels, of the measure of *Handburgh*, after the auld assise, and *Affise Herring*. *Affise Herring*, smaller barrels nor vessels. Ia. 3. Parl. 10 cap. 76. *Affisa herringum*, the assise Herring, signifies ane certaine measure and quantity of Herring, quhilk perteinis to the King as ane part of his customes, and annexed property, *Iam. 6. p. 15. c. 237.* For it is manifest that he suld have of every Boat, that passis to the drave and slayis Herring, an thousand Herring of ilk tack that halds. *viz.* of the Lambmes tack, of the Winter tack, and of the Lentron tack, in December 1516. The Kings Advocat contrar *Williams Harper*, and his Colleges. Item, the Kings rents of assise is interpreit, to comprehend the Kings lands and customs, 9. Decem. 1466. and 11. Mart. 1500. In the action betuixt *James Ogilbie*, contrair *Patrick Gray*, certaine oxen was poynded for sindry unlawes, and for the reat assise aucht to the Kings Hienes for the blanch fermes of the lands of *Arly*. And sik like, the third of the Kings rent of the assise, That is to say, the lands and customes suld perteine to the Queene, as her dowry, *Iam. 3. 9. Octob. p. 1. c. 2.* In this Realme ane assise is called ane certaine number of men lauchfully summoned, received, sworne and admitted to judge and discerne in sindry civil causes, sik as perambulations, commissions molestations, purpreture, division of lands, serving of brieves, and in all and sindry criminall causes. For be the law of this Realme, all crimes suld be decyded and tried be ane assise, *Stat. Alex. c. 3.* quhairof their is twa kiodes. Ane ordinarily in use, quhilk may be called ane litil assise, of the number of thirteene

3

4

5

Two forme teene or fifteene persons, lib. 3. c. generalia 23. The vther called of assises. an great assise, quhilk consists of five and twenty persons, lib. 1. c. poena. 16. lib. 2. c. dos 19. and all the assisors in baith the ane and the vther assise suld sweare an solemne aith, to judge and discerne richlyt, vid. *Bona patria*, for the quhilk cause they ar called *juratores* lib. 1. c. poena. 16. and in sum buiks *assis*, is called *jurata patria*, and in the English lawes an Jury. The great assise (quhilk is not commonly used in this Realme) is chosen against six persons, as hes bin upon an little assise, and ar accused *de perjurio vel temerario juramento*: and that they have done wrang against the lawes in clenging ony trespassor, quha is guilty and fowle of the crime. In the quhilk case, the man that is clenged, albeit wrangeously, cannot be filed againe or punisht: for he being anis quite, he is ever quite for that crime: bot the assisors may be accused of their wrangous deliverance. I. 3. p. 8. c. 63. The great assise suld be of five and twenty persons, nobil and gentlemen: and the Lords of the Session, upon the first day of Junij, 1591. declaird all them to be esteemed, halden and repute as noble persons and gentlemen, that fall happen to be summoned upon six an assise, quha ar landed men, albeit they be inferior in rank and dignity to them, upon quhais assise they suld passe.

Attaynt, Taynt, an word meikle used in the English Lawes, *Attayntus*, is accused, filed or convict for ony crime or cause. Stat. 2. Ro. Br. c. Item c. 9. Item de minus 21. c. Item 24. An Judge being convict or attaint of taking of buds or of partiality, suld be punished at the Kings will, and tine his Office. St. 2. Ro. Br. c. dominus rex. 22. Stat. 1. Ro. Br. c. Item quod nullus 8. Ia. 5. p. 7. c. 104. Bot attaint or *Taynt*, is called the deliverance or probation of foure and twenty (*alias* five and twenty) leil men, the quhilk may be called an great assise, lib. 1. c. poena 16.

Attachiamentum, from the French word, *attacher, ligaren, etcere*, ane charge or binding of ony person, to the effect he may be drawen, and compelled to compear in judgement and answer as law will: In the Preface and beginning of the buik called *Quoniam attachiamenta, attachiamentum dicitur quoddam vinculum legitimum per quod pars defendantis invita astringitur, ad standum juri, & respondendum parti de se conquerentis juridicè*. And *attachiamentum* sometimes is of guds and geare, as in contracts, conventiones, and auctiōnes of moveable guds, in the quhilk the gudes and

and geare of the defender are *attach'd*, untill he finde caution and pledges to answer as law will, quhilk being funden, the *attachement* is relaxed and lowsed. Sumtimes attachment is of ane mans person and body, as in actiones of wrang, or criminall causes. In the quhilk, the person of the transgressors suld be first attached, and gif he be disobedient, or fugitive, his guds and geare may be attached, untill he finde caution to underly the law. Swa commonly, bot not perpetually, *attachiamentum, vel est bonorum, vel corporum, sicut arrestawentum bonorum:* as gif the ~~the~~ owner can nocht apprehend ony man indited, to attach him personally to compeir in the Justice aire: then he suld arrest all his gudes moveable and unmoveable to remaine under sure pledges: and be furth command to the King, in case he compeir not. *leg. Malc. Mak. c. 1.* and in criminall causes, specially in treason the person or body of the defender suld be first attached, and put in sure firmance, until he have thoiled ane assise, quhider he be quite or soule. *Ja. 2. p. 12. c. 49.* And in civil causes, the guds & geir of the defender suld be first arrested. *li. 4.c. 1.* as writes *Mattheus de afflitis, in consuetudines Sicilia, constit. Humanitate. N. 33.* Be the civill Law in execution of decreetes, first the moveable gudes pertaining to the debtour, suld be first discussed, thereafter his lands and immoveable gudes may be comprised. Thirdly, the debts auchtand to him, quhilk are called *nominis debitorum*, may be persewed and discussed. *l. a. Divo Pio. 15. sect. 3. De re Iudicar.* Quhilk is conforme to the a^e of Parliament, quhairby it is statute, that the lands pertaining to the debtor suld nocht be comprised, untill his moveable gudes be first searched, socht, and discussed. *Ja. 3. p. 5.c. 36.*

Averia. lib. 4.c. si quis federit. 23.c. quicunque. 31. aff. Reg. D. a. c. si quis federit 41. In the quhilk place it is call *meilius animal*, the best aucht, from the French, *le meilleur avoir*. Quhilk be the law is given be the husbandman to his maister, as ane herezelde, and lib. 4. c. quicunque, 31. *Averia*, is called *animal*: the quhilk place is *de narratione animalium*, that is, of poinding of cattell, or of moveable guds.

Avunculus properly is the mother-brother, bot sumtime conforme to the French manner of speach, it is taken for the father-brother, in Latin *patrus*. *l. 2.c. si quis liberum 24.c. deficientibus 24. de judic. c. Item nota 15.* In quibus locis iuu successonis dicitur pertinere ad *avunculum* ejusque liberos, quod non est *consentaneum iuri nostro civili*,

civili, si avunculus proprie accipiatur pro fratre matris, qui a cognato-
rum, b. e: consanguineorum, ex parte matris apud nos nulla est successio.
sio. b. e: cognati non succedunt alii.

B

BA G I M O N T, historation of benefices. Ja.3. p.6. c.43. Ja.4.
B p.3. c. 39. The Pape in the time of King James the third, tend
in this Realme ane Cardinall and Legat, called Bagimone, Quha
did make ane taxation of all the rentalles of the Benefices, that the
famin might be knawin to the Pape. To the effect, that when ony
person came to Rome, seikand bulles or right to ony Benefice fra
him, he might conforme to the laid rental as he pleased, sell the
famin for fameikle Silver, or Gold, as he thocht maist profitable.
Qahilk taxation is grounded upon the Canon Law, in the Extr
avagant, suscep*ti regimini*, lib.6.

Bairman. Vids. Divours.

Ballivus, ane French word, Bailli, ane Bailli or Judge. lib. 1. a.
10. c. 31. quha hes ane ordinar power and jurisdiction. *Nam bal*
livus sive iudex non potest esse arbitrus. lib. 2. c. 4. Ballia, in Latin, Pro
vincia, ane Baillery or jurisdiction. lib. 1. c. 7. c. 18. stat. 2. Rob. B. c.
4. c. Robertus. 2. 8. Dicitur autem Ballivus a Baal, b. e. domino, quia
ballivus dominans suos subditos, quas eorum magistri. Et domini, Re
buffus in confit. regias. de sententi. excommunicat. 7. gl. 1. And in the
Checker compts, the Baillies of Burrows, are properly called
Ballivi. Quha be the Lawes of this Realme, makis compt zeirly
in the Checker, of their Burrow mailles, as ane part of the Kingis
annexed property, and also of their common guides, qahilk suld be
employed in the necessar affaires of the Burgh. And like-waies in
the Checkers, compt is maid of the Kingis property, be sikes are
called Ballivi. Regis, and in contronellis with his rents qahis compts
ar called computa Ballivorum ad extra Scel. Extra Burgos. And
are improperly called Ballivi, being Chalmerlanes in-put, and out
put be the Comptroller, for quhom he suld be answerable. Mair
over, in the Checker-compt, maid per annas, is open the Compt
ter is charged in his compt, conforme to ane forme, compr, rolled
of before. And computa, wharsales, is quhen the Comptter is
charged

charged in his oneration, be ony precept direct be himselfe, or be ony intromission maid be him of the Kingis rentes, before the in a-
king of his compt, or with ony dewty, silver, or vther thing per-
teining to the King extraordinarly, and not zeirly, as ane part of <sup>Computum
per rotulos
& extra rotulos.</sup> his patimony.

Banrents, Banerets. Jam. 1. par. 7. c. 101. In the quhilke place it is manifest, that Ban-rent is ane kinde of estaite, greater and mair honorable then Barronnes : For the Barronnes ar permitted to chuse their Commissioners, to be sent for them to Counsell and Parliament, to propone all and sundry needes and causes perteyning to the commounies, in the Parliament or generall Councell : Bot the Ban-rents suld be warned be the Kings speciall precept, to compeir personally in the Parliament or Council ; In sikh maner, as Bishops, Earles, Lords, Abbots, Priors, usis to be summored. This word is commonly used in the English Lawes, and in sundry lawes of vther Countries. *Civis. lib. 2. de Fend. Tit. 7. de novis fidelitatis forma. Boerius in decisiones Burdigalenses, Trait. de autoritate magni Consilii. Guido Papa. quest. 614. & 326. ius Normand. 5. c. 2. Num. 7. Zafius de Fend. Tit. qui Fendum dare possunt.* Some callis Ban-rents them quha ha Banner rent, and divided in sundry parts. Vcheris callis them quha ha the rent or zeirly dewty of ane Baronne. And sikh-like, to understandis them quha bearis the Kingis Baner in his hoist and array : quhilke office and honor perteynis heretably and allanerly to the Constable of Dundie, the Kings Baner man. But all men when they ar belted and made Earles, ar called Baronne Ban-rent, and Lord of our Soverain Lordis Parliament : Quhairby it is manifest, that the said dignity is commun to many, and nocht proper to ane man : And therefore seeing *Zafius* in the place foresaid, wrichtis, that Ban-rent is ane dignity concerning weir-fare : I think in my opinios, that Ban-rentes are called *Chevaliers of Armes*, or *Knichtes*, quha for obtaining of great honor, dignities, or riches, ha power or priviledge granted to them be the King, to raise and lift up ane Baner, with ane company of men of weir, either horse-men, or sute-men, quhilke is nocht lesun to ony Earle or Barron, without the Kingis speciall licence, asked and obtained to that effect. As *Henry Pasquier Advocate. Lib. 2. des re-
cherches de la France. c. 9. Fol. 100.* provis be money and sundry arguments of the History of France. And Doctor *Thomas Smith*, ane learned man, in his bulke, anent the Commonoun weill of England.

Lib. 1. cap. 17. saith, that Knights, Ban-rents ar maid in the field, with the ceremony of cutting the point of their standerd, and making of it as it were an Banner, they being before bachelers, are now of ane greater degree, allowed to display their Armes in ane banner, in the Kingis hoist and armie.

Bannum, Banished for ony crime or vther cause. *Bannum*, signifies ane trumpet, in Latin *tuba*, as writis *Alciatus lib. 2. parer. c. 2.* ex *Procopio, lib. 4. belli Persici.* And be the common use and consuetude of this Realme, quhen ony person is banished, or put to the horne, the same is done with three blasts of ane horne, or ane trumpet. And for that effect, it is statute and ordained, that the Kings Maire or scriand shall have ane horne and wand. *iam. t. p. 7. c. 99.* for with the horne he denuncis men rebelles, and with the wand, hee receivis them to the Kings peace, quhilk therefore is commonly called, the wand of peace. *An Bannum possit impunè offendì in corpore & bonis vid. Chessanum in consuetud. Burgund. p. 2. scđt. 1. ver. confiſcationis. N. 7. cum seqq.*

Dux.

Baro, ane Barrone. *Zafius de Fendo. Tit. qui feudum dare possunt,* writis, conforme to *Cornelius Tacitus in Libro de Germania;* That *Dux*, or ane Duke, is the Governor of ane Province or Armie. *Comites*, or Earles, are they quha are assessoris to the Duke, or Prince; swa called à comitando, because they accompany the saidis Dukes, and never passis out of their presence. *Marchiones*, ar Marchesses, Wardanes, or keipers of the Bordoures: For *Mark*, *March*, in Latine *Limes*, and *Mark* grave in Dutch, is *comes limitaneus*. And all *Marchiones*, dwelling on the bordours or Marches of the Cuntry. As in this Realme, the Earledome of *March*, quhilk perteinis to our Soverain Lord, as ane part of his annexed property.

comes Martialis.

Bot *comes Martialis*, or Earle Martiell, is ane man of dignity or jurisdiction, à marte vel bello: Because the jurisdiction of weir-fare perteinis to him. *Alciatus libro de singulari certamine. c. 32.* Affirmis, that like as the Earle is inferiour to ane Duke, swa ane Barron is inferiour to ane Earle: And that *Baro*, commis fra the Greek word *batus*, *gravis*, wise, grave, prudent, and discreet: Bot contrariwise, *Petrus Pitius, Lib. 1. Adversariorum* writis, That *Baro* signifies ane baird, suile, or unwise man. Quhais opinion, I cannot gudly approve. *Baldus in Cap. Innotuit de ejclitione, definit Baronem, ut sit quisquis merum vifumque habet imperium in aliquo castro vel oppido, ex concessione principis.* In this Realme he is called ane Barron,

Baron,

ron, quha haldis his lands immediatly in chiefe of the King, and his power of pit and Gallous.

Barrarie, or Barrataria, ane kind of Simony, specially in obtaining the right of benefices. *Socinus reg. 55. Baldus in consilio 21. Part. 5.* For all men passand to Rome, and byand benefices committis Simonie, and ar called *Barratours*. Be quhom Barrarie is committed, and quhilt is the paine theirof, it is manifest be the acts of Parliament. It is ane Italian word, and be the Italian interpreters of the Civill Law, *Barrataria*, is quhen ane Judge corrupted be buddes (sik as gold and silver) judgis wrangeously, *Petrus de Raven singula. 156.* and swa doing settis Justice for meid and profit, and makiis his office ready to be bought be him, quha will give maist theirof. *Angel de Syndicatu. Nu. 4.* For the quhilk crime, he may be deprived, and sharply punished. *Bartol. 1.1. Menia 13. sect. 1. Nu. 3 de annu. legat.* And likewaies *Barratours* in the Lawes of *England* suld not be suffered to make sute, or to give judgments, or pronounce sentence or domes. *A. 3. Edward. 1. cap. 32.*

Bastardus, in French *Bastard*, ane baime unlauchtally gotten outwith the band of Mariage. Quhilk word is barbarous, and (as I suppose) na reason can be given quhairfore it is so called: But *Gabriel Palaeus*, in his buik *De notis spuriis que filii. c. 18.* allegis it to cum fra *Bauroes*; quhilk signifies an huire, or common woman. Bereason that bastards are commonly gotten and procreat with sik weemen: in Greek he is called *νοθός*, for *νοθία* signifies that part of the fathers gudes and geare, quhilk be the Law of the *Athenians*, leasomly mycht be given be the father to his bastard son, extending to the summe of *mille drachme*, and therefore *νοθός* was called all that was not trew or lauchfull, as writis *Budens in Pandectas.* And swa commis *νοθός* fra *νοθία*, *privativa particula*, & *νοθός* b. e. *divinum, teste Snida.* Because he wants that quhilk is godly and lauchfull, that is ane honest and lauchfull birth or parentage. And swa *νοθός* dicitur *qui non sit legitimus*, to the quhilk there is na proper Latine word correspondent, as *Quintilianus* testifies, *lib. 3. c. 6.* Nevertheles, he is commonly called *Spurius*, for in *I. I. ff. spurius. de posses. contr tabul.* *Spurius* dicuntur *οἱ τῷ πατέρι καὶ οὐ τῷ μετεπέμψασθαι σάτιον, vel seminatioν, eaque vagi, & promiscua: ubi doctiores πατέρων legunt, quasi sparsim concepti*, like as they are called *vulgo concepti*, *in adoptivis. 14. de ritu nuptiarum.* Likewise *Spurius* was the proper name of ane man among the *Romans*, as *Titus* or *Cajus*, & was written with twa

letters *S.* and likewaies they quha had na certaintie Father, was de-signed with the saids twa letters, *S.* and *P.* and swa by common use and consuetude, *S* purii dicebantur *sine patre*, as writis *Plutarchus in problematibus*, because their father and mother not being lauchfullie maried, they have na certaintie father: *quia pater dicitur quem de gratia nuptie demonstrantur*, *scilicet ff. de in ius vocand.* And it is aliko to have na father, and to have incertaintie father, as we say, he quha wil have mony gods, hes na God. *Postremo Blondus l.8. Rome triumphans, is (inquit) qui illegitimè natus esset ex concubina vel scorto contumelia causa, spurius dicitur, eo quod Sabini, muliebre pudendum appellurunt: hec ille. In honesto originis genere in lucem editos, infami & in honesta appellatione horare voluerunt veteres.* And that part of weemens claiths, sik as of their gowne, or petticoat, quhilk under the belt, and before is open, commonly is called the *spare*. As concerning the succession of Bastards, thir short rules are to be observed, conforme to the law, and practicque of this Realme. First na Bastard, nor na person, not procreat and gotten in lauchfull mariage, may ony waies be lauchful aire and successor to ony of our Severaine Lordis lieges. *Lib. 2.c. in custodis 50.* For be the Law of God, *Ismael* being bastard, gotten upon ane bound woman *Agar*, gaicht not be aire to *Abraham*, with *Isaac*. *Genes. 21. 10.* Because allricht of succession is be reason of bluid, and consanguinity of the father side, quhilk is called, *jus agnacionis*, and their foir Bastardoru, ane bastard, quhais father is incertaine, be the Law is understand, be reason of bluid to be sib to na man, and nane to him, *Et ubi nullus est pater legitimus, ibi nulla est agnatio aut successio ratione agnacionis.*

*De Succes-
sione affixa
& passiva
Bastardoru,
Bastardus
non potest
esse heres.*

*Legitimi
bastardorum
liberi, ipsiis
succedunt.*

*Fiseus suc-
cedit filio
vel filie
Bastardi.*

Secondly, the bairnes maill or female, lauchfull gotten be ane Bastard, with ane lauchfull maried wife, succeeds to him as righteous and lauchfull aires, in his lands, gudes and geare, in the saman manner, as gif their father had bene gotten and borne in lauchfull band of mariage, *Quia filius est heres legitimus, quem nuptia demonstrant*, *lib. 2.c. in custodis 50.*

Thirdly, gif the lauchful bairne, mail or female of ane bastard, succeeds to him, and thereafter deceasis without lauchfull aires gotten of his awin body, or without lauchfull brother or sister: and lauchfull testament and later will maid be him, all and haill his lands, gudes and geare, not being disponed and annalied be him in his life time, aucht and fuld perteine to the King, be the priviledge

*Σπαρε
Spare.*

ledge and right of his Crowne: Beaulte, as said is, there is no right of succession in this Realme by the mother side, and the sonne or daughter of the bastard deceasand; as said is, he is no person sib to him by his father side: And swa all right of succession deceasand bath upon the mother and father side, *ram ratione cognationis, quam agnationis*, the King by reason of his Crowne, is universall successor to him in his lands, gudes and geare, as *utimur hanc*.

Fourthly, an bastard being *legitimat*, or not *legitimat*, may in his liege pousty, and induring his life-time, annaly and dispose his lands, gudes and geare moveable and unmoveable, to whom he pleasis, in the samyn forme and maner, as ony person gotten in lauchful bed may doo by the Law.

Fifly, all gudes moveable and unmoveable, of ane person borne bastard, and deceasand bastard, without lauchfull aires gotten of his body, and na disposition theirof maid in his time, perteineth as escheit to the King, by reason of the right of his Crowne. *Lib. 2. c. queri autem 31. leg. forfice. si bastardus 32. de judic. c. si bastardus 33.*

Sixtly, ane Bastard being naturalized or *legitimat* be the King, under the great Seale, by the practique now used and observed, ^{Bastardus} ^{legitimat} ^{conf. ref.} his allanerly power to make testament, dispose his moveable gudes and geare, and nominate executors, conforme to the Law of this Realme: be the quhillie Law, na man lauchfully, or unlauchfully, gotten or borne, may make ony disposition in his testament, bot of his moveable gudes allanerly. For na man upon his death-bed, or in his latter will, without consewe of his aire, may dispose ony part of his heretage, *lib. 2. c. Poer. 21. c. Cum quo 36.*

Seventhly, gif ane bastard legitimat and rehabilited in his life-time, makis ane testament lauchfully: Tho King thereby is excluded fra all right and intromission with his moveable gudes: Bot gif he makis ane testament qahilk is null and unlauchfull: Or, gif he makis na testament, The King by reason of bastardry, succeeds to him in all his moveables, and unmoveables: For in this case, the effect and power of the legitimatyon ceasis, and heis na operation.

Auctly, quhen ane bastard deceasis without ony lauchful testament maid by him, or not havand aires lauchfully gotten of his body, The King be his Thesuar, or ony vther havand gift and power for him, may intrometer with all the moveable gudes quhat sumever.

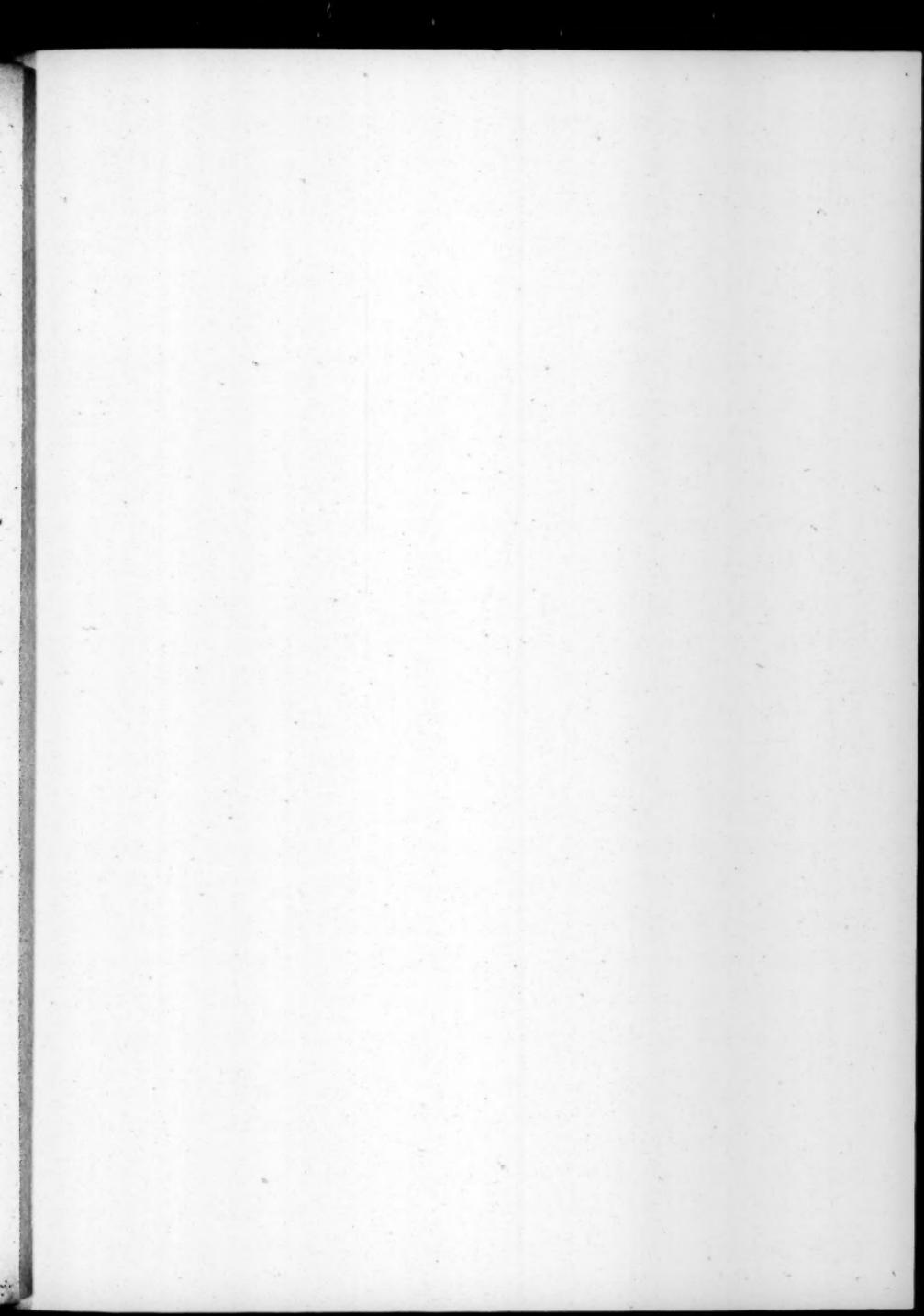
Bona mobilia
Bastardis
di f. co in-
seruntur.

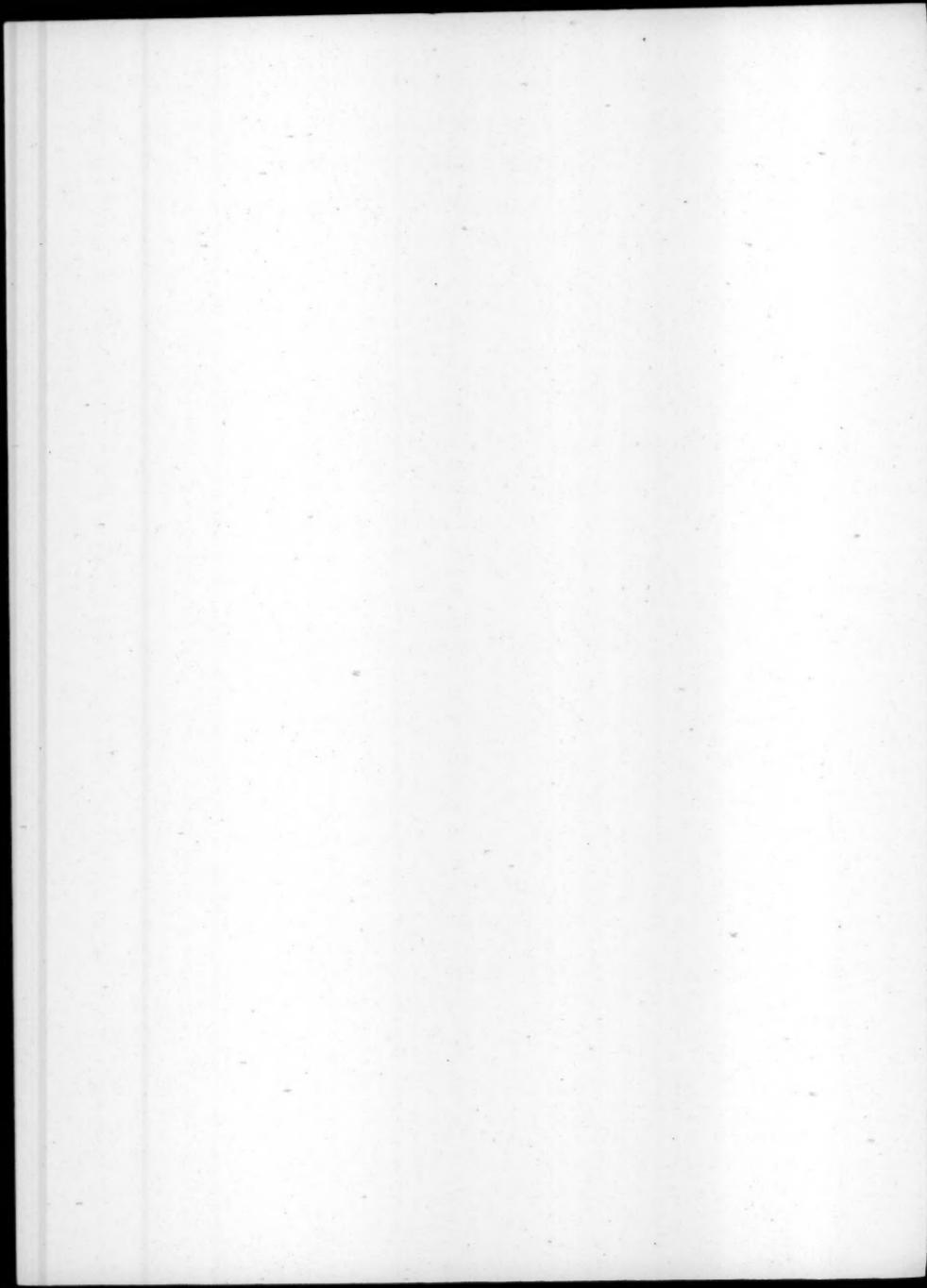
sumever, pertaining to the Bastard, the time of his decease, and not disponed be him in his life-time, at escheit pertaining to his Hienes, be reason of his Crowne and kingly power.

Ninthly, sik-like all lands and tenements pertaining to the said Bastard, the time of his decease, and halden immediatly of our So- veraine Lord in chiefe, after his decease, perteineth to the King, and the property thereof, be decease of the Bastard, and be reason of escheit of Bastardry, belangand to the Crown, is consolidat with the superiority in the King's person; in sik forme and manner, as gif the Bastard in his life-time had maid resignation thereof in the King's hands.

Tenthly, concerning lands and heretage, pertaining to ane Ba- stard, not halden of the King, bot of ane other superior, Spiritual, or Temporal: the King hes richt of presentation: Be the quhilk, after the decease of the Bastard, he may present ony person quhom he pleasis, as heretale tenant to the Bastards immediat superior, be his letter, under the quarter Seale, bearand. That forsameikle, as *In aliis b. nis immobilibus. Rex habet ius presentationis.* *N.* born Bastard, and deceasand Baltard, without ony aires lauchfully gotten of his body, and na lauchful disposition maid be him in his life-time, had the lands called *B.* perteineth to him in her- age, halden immediatly of the said superior: And his Hienesse being willing not to prejudge the superior, anent his superiority: Therefore presentis to him sik ane man, charging the superior to receive him, and give him sik infestment of the lands, as the um- quhile Bastard had of him of before.

Berthinsēk, or Birdinsēk. Be the law of Birdinsēk, na man suld dic, or be hanged for the theft of ane schiepe, ane weale: Or for sameikle meat as he may beare upon his back in ane seck: But all sik thieves suld pay ane schiepe or ane cow, to him in quhais land he is taken: And mair-over, suld be scourged. *Lib. 4.c. De Yburpan- nan sīca. 14. Quoniam attach. c. per constitutionem 44. Ass. Reg. D. a. c. 1. In fine. Stat. Alex. c. de Berthinsēk 19.* Quhilk is conforme to the Civill and Canon Law. *Nam omnia delicta & malitia estimantur voluntate, & proposito delinquentis. l. quisinjuria 53. In prin. ff. de furtis l. 1. ff. de Var. & ext. Crim. Ideoque si quis necessitate famis se- danda, egestate, aut paupertate coactus, rem alienam conreat, quia non adeat animus furandi cupidus, excusari potest e. si quis. Extr. de furti. Non enim factum, sed causa faciendi inspicitur. Verum 39. ff. & vulgo dici solet, necessitatem, non habere legem. L. Non solum 5. Vlt. de excu- sationib. Tutor.* *Bluidneis,*





Bludweit, Wyte, In English is called *Injuria, vel misericordia, domino flagrante wronge or injury (like bloud)* For they which are infect with Bludweit, has his liberty to take up all lawes or amerciaments of Court, for effusion of bloud. And to hold Courts thereupon, and to apply the samyn to the awynng and profit.

*Bludweite, ane word most commonly used in Charters and infectienges, thenwell understandes in the common practique of this Realme. For in strife or twylzie, quhairin happens effusion of bloud; the ane party is syled be ane assise of the bloud; and the other partie is convict of the wyte, quhairin trow, twa unlawes are payed for ane fault or crime, contrary to the rule of the law, *pro non debet effusio sanguinis foris factum vel misericordia.* And in vold authentick buiks of the Lawes of this Realme: Like as *Flyt-weete*, is ane amerclament for flyting or ane verball injury. *Sive Bludweite* signifieth liberty, quhairbe ane is free and quiche of payement of unlawes or amerclaments for effusion of bloud, and his power to hold Courts thereto, and to take up and apply the samyn to his awyn profit and utility, being infect with Bludweit. Yet nevertheless, he may not take twa unlawes theirto, but ane allanerly: For *Bludweit, est minus verbam iuris bloud seu compunctione*, signifying ane pain, and unlaw or amerclament for sholding of effusion of bloud.*

Quibille pining, in otrault lawes, is liquidate and modified by payement of ane certaine number of Kynglas was commonly used and wones for other drynges in those dayes, and that conformes to the effect of the peynis reciver of the injury. Lib. 4. c. 5. signall 67. In the quibille place, it is manifest that the Bludweit or unlaw, for effusion of bloud is by man, under the heath of his end (*abruu an helium*) is leesse be the third part (*tertia pars minor*) then the unlaw or bludweit abone his end or mouth. For it was esteemed ane greater injury, to breake ane mans head, or shad the blaid of his head, eicher before in his face, or behinde, then in any other inferiour part of his body: because the head is the principall and chiefe part of ane mans body, quhairin the judgement and memory makis residence.

*Bane, Patria, Lib. 1. c. signall 29. An assise of country-men, or of yude, nychthouris: sometimes it is called *Assise, hominum, quhen twelve or thirten are choosen for of any part of the countie, to passe upon Assise, quha are called Justitiarii, because they iurant, fidei sware judicially, in presence of the party, ane folclome acht.**

Bondi. signifies a man bound in slavery, or in servitude to another, native, and *Villani*, signifies a native. *Lib. 2. c. Consequenter 13.* *cam* *seggi*, *Bondi*, the reason of their band and obligation, as bound and oblied men. *Nativi*, the reason of their nativity and birth, as home men within the Land, *Quae scripsit Iglesia*. That is deputate, destinate, or ordained by their master to dwell and remaine upon the land for husbanding and labouring thereof. *Lib. 2. c. Pluribus pa-*

Villani. And therefore vtherwaies ar called Villani, be reason of their office: in so far as they have the cure of Villages, and land warr husbandry committed to them. *Bondagium per anteriores, crines capitis, per anterio-Quoniam, sache, s. ab tribus 131. 13. Quhen ony free-man, ren- res crines.* nunciat his liberty, and makis himselfe ane bond, or slave to ane great man in his Court, and makis tradition, and delivering of himselfe be giving ane grip of the haire of his forehead; to the effect he may be maintained and defended be him thereafter. The quhilke bondes, gif they reclaim to their liberty, or happen to be fugitive fra their master, they be drawn back againe be the Nose, to servitude: Fra the quhilke, the *Scotsis*, saying commis, quhen ane boastis, and menacis to take ane vther be the Nose, And it is leasim to ony man to sell his liberty, hot gif he dois, he may never recdver the same. *ff. Reg. Dic. Quilibet. 12. Quoniam ar- sache quilibet, 50.* To this the Civill Law is conforme. *Nam his qui ad preciis participandum se renuendari possunt, ad libertatem proclamare non licet. I. signibz ad lib. Petrus Richius, lib. 1. Advo- sariorum, makis tradition of ane kind of adoption, per personam fru- capillos, quhen ony person tak ane grip of ane other mans haire, and did cut it: Quhairby thet ane became the father adoptive, and the vther the soane adoptive. In vtoz easim pris to these stolis*

Borgh, ane Cautioner, pledge, or soverty. *Jan. 3. Par. 14. c. 99.*
In Latine, *Fiducia* & *Fide-Borgh*. vid. *Plagiis*. Borgh of
Ham-hald. & *Mordag*, a. *Scandum*. Ane Cautioner soverty
used in bying and selliny. Qualitat the seller findis to the byer, to
make the gude furth comittand, as his awin proper gude quondam
wartand the samyn to him. For it is furent, thatin maner byc
on y

ony gear, except the seller thereof finde him ane lachful pledge, quhilk is called Borgh of Mant-hald. And gif it falle happen, the guides sauld and bocht, to be challenged be ane vther, and the said pledge cannot finde him, for quhom he is pledge, to relieve him of the said challenge: He shall pay to the Challenger the triple of the thing challenged, and aucht Rye to the King as ane unlaw. And gif he quha fand the said pledge, relievis him not from the said damage, he shall be banished the Realme. *Lib. 1. c. Statutum etiam 19. St. Alex. c. Statutum etiam 13.* For generally the Cautioner hes gud action, contrair the principall, for his reliefs. *Lib. 3. c. 1. In fine.* And ilk-like within Burgh, the like caution shal be found in bying and sellung of all merchandise, except meat and drinke, and vther things of small consequence. *Leg. Foref. c. Nullus 48. Et de jure* *civilis venditor per evitacionis præstationem, cogitar servare emporem* *indemnum, eodem modo as si dominum nullus esset. L. exemptio. N. im-* *primi. ff. de actionibus emp. vid. Hamhaldaire. vid. Hamfucken.* Mair-over, gif ony man becommis ane furth-command borgh for ane vther, to make him furth command as ane haill man, it is sufficient, gif he produce him personally, haill and sound before the Judge, in lynchfull time and place. But gif he be pledge for ane vther, that he shall be answerable as law will, hee mon fatisse for him in Court, and to the party to quhom he is pledge, in all things, as the principall shal have done. *Quoniam ait act. c. ubi aliquis 11.*

Borhna, Buthna, Bothena. L. 4. c. Si quis namos 30. appearis to be ane Parkie quhair cattell ar fed and inclused, *ut in lib. M. Alexan-* *tri Skene, frater mei germanus quondam in supremo Senatu Advocati.* Quhilk is confirmed be Hector Boetius, *l. 7. c. 123. Nn. 35.* *Cum* *scribit maritima Thessalia partem & veltigali, quod Regis procurator* *scribit ab incolis in annos pendi solitum erat, cum gregum multitudine* *abundaret, Buthyniam appellatam: est enim, quibam idem quod ve-* *ctigal, præcia Scotorum lingua: & Bath, ovrum collectio: haec illa.* And it is manifest, that the place in the quhilk the 2000 ar inclused quhen they ar milked, is commonly called ane Bucht. *Slk-like* *Aulus Gellius. 1. 1 f. c. 1. wrtis that Italy is so called, a Bubus, be-* *cause Ίταοι in the auld Greek language, signifies Oxen, of the* quhilk there was great abundance and multitude in Italy, quhilk is confirmed be *Paulus Venefidas, utherwales called Paulus Dia-* *conius, lib. 2. c. 24. Italiam inquit ab Italo, Sicularum duce, qui cum an-* *tiquis in uox: five ob hoc Italia dictar, quia magni in ea boves, h.e.*

De verborum significacione.

Itali habentur, ab eorum quod est Italius, per diminutionem, una li-
ter a addita, altera remota, utrumque appellatur. Item Bothene. S. WIL.
c. i. 1. Signifies aunc Barfonie, Lordship, or Schireffdom, as is mani-
fest, Ex lib. Sconens. c. 99. Aff' a Regis David. Et Dom. Bothene, is
the Lorde of the Barrony, land, or ground. Leg. Port. ca. 1. in libro
M. Wilhelmi Skene, fratrio mei Commissarii Sancti Andree. p. 149.
c. 79. Item, It is statute and ordained, that the Kings Mute, that is,
the Kings Court of ilk Bothene, that is, of ilk Schireffedome, shall
be halden within fourty dayer. Aff. Reg. Das. c. 6. in Libr. quodam
M. Roberti Carbraish. I. C. Dottissimi.

Bote. Ane auld Saxon word, signifies, Compensation, or Satis-
faction: A man-bote, cheft-bote: Andis all excambion, oncross-
ing of lands or geare moveable: The ane part that gettis the bet-
ter, givis ane Bote, or compensation to the uther. Quhair of there
is aue example in sell. Si famile. Instit. de Offic. Judic. & in sell.
quadam actiones. Instit. d. actionibus. Ane man-bote, is affchment
for the slanchter of ane man. Kin-bote, for the dauchter of ane
Kins-man. Theft-bote, is quhen ony man agries with ane thiefe,
and puttis him fra the Law. Iac. 5. 12. Iul. Parl. 1. c. 2. Or quhen
ony sellis ony thiefe, or finis with him for theft-dome done, or to
be done. Iac. 1. par. 13. c. 137.

Bovaria terra. Ane oxen-gate of land. Lib. 4. c. 1. Si quis seden-
rit 23. Quhilk in sum buikes is wrangoeully written *Duvarater-
re*. The Lords of the Session be their decree. 18. Iulii. 1541.
esteemed and modified ane Oxen-gate of land to twenty shillings
in all. dewties zeirly. Bot in this I find na certaine rule; For some
land is mair fertill, and uther mair barren: Alwais, ane Oxen-
gate of land, suld containe threttene aicker; And four Oxen-gate
extends to ane pound land of auld extent, conforme to the de-
cretes given be the Lords of the Checker. 11. Mar. 1585. Pa-
trick Mony-penny of Pilrig, and luthers, contrair *Adam*, Bishop of
Orkney. And at the instance of *John Greichtoun* of Brunstoun, con-
trair *John Fenton*.

Breve. Ane commoun word in the Lawes and practice of
this Realme; And also in the Civill Law. I. 6. De exaltib.
Tribut. 1. 10. I. 11. c. de convenient. fisci. Debitorib. Lib. 10. Quhair,
in the Glosse, it is called *Schedula*, aue schort compendious write;
Like as all Brieve are conceived in few words, and as alwa called
Brevicula. And in *Rubr. C. de sentent. ex periculo repitand. Alcianus*

lib. primi: dispunct. cap. 21. Et Jacobus Cujacius, Antonio Contio regnante, legunt ex Breviculo, id est, ex scripto breviori formula concepto. Because the sentences and decretes of Ordinar Judges, suld be red and pronounced in wrt. *Breve testatum*, is ane wrt or instrument, subscribed be ane publick Notar: Or be twa witnessis, quha ar called, *pares curia*, vel *curia*. b. c. *Contra assallis*: Quha baith haldis their land of ane superior. *Cujacius lib. 1. & lib. 2 Tit. 3. De feid.* In the auld Lawes of this Realme, diverse and findry Brieves hes bene used and wounte, quhairof mention is maid. *Quo. attach. c. de brevibus. 31.* And in findry uther places. Bot seven forme of Brieves allanerly, ar now commonly used. The first, the Brieve of Mortuacstry. The second, the Brieve of Tutory. The third, the Brieve of Idiotry. the fourth, the Brieve of Terce. The fift, the Brieve of Line, or alienation of lands and tenements within Burgh. The sext, the Brieve of division. The seventh, the Brieve of perambulation. Quhais of the three Brieves ar answered and retoured again to the Chancellary and the uther four receivis na retoured answer. The cause of the diversity dependis upon the forme of the Brieves direct furth of the Chancellary. Because the three first brieves in the end of ilk ane of them conteiniis ane commande to the Judge to quhom they ar direct, to send back againe his answer to ilk point of the brieve. And the remanent four brieves hes na sic command, and theirfore requirs na answer.

Breve de divisis faciendas. Is the brieve or summonds of cognition, or molestation aenent the property and commony of lands, aenent the bounds, meithes, and marches theirof betuixt Neighbour and Neighbour: Quhilk be the new Act of Parliament, suld be decided be ane Assise, before the Schireffe and his deputes. *Act. 6. Parlia. 11. 9. 42.* It may be like-waies called the Brieve of division, or of perambulation, or ony uther concerning the marches of lands, *Lib. 2. c. dictiur 74.*

Breve de nova dissafina. *Quo. attach. c. de brevibus 31.* Is the brieve or summonds of ejection or spuilezie: For *dissafisor*, is he quha ejectis ony man furth of the possession of his lands, without ordour of the law, as wrtis *John Rastel. verb. dissafisor*: And *nova dissafina*, signifies also wa spuilezie, maisterful, wrangeous, or violent spoliation and away-taking of moveable gudes and gear. *22. March. 1547. William Lindsay contrair Alexander Chene. Molinetus in stilo curia Parlia. part. 1. c. 10. s. 3. 8.* affirmis that *nova dissafina*, is that quhilk

in the Civill Law, is called *interdictum unde vi*: And comprehends also *interdictum uti possidetis*. And in the Law of Normandy, lib. 8. cap. 3. It is called, *interdictum recuperanda possessio[n]is*, vid. *discessione*.

Breves pleadable, *Breve placitabile*, ar all sik brieves, quhilkis ar persegued and defended be ane ordinar forme of proces before ane competent Judge, at the instance of ane persegwer against ane defender. For it is statute, that na man fall be ejected furth of his land or tenement, quhairin he alleagis him to be vest and saised, bot be ane brieve pleadable, or sum other brieve accordand thereto, and that the said person be lawfully summonsed to answere upon his heritage, at ane certaine day and place. *Stat. 2. Rob. Br. c. Item. 25.* Quhilk is conforme to the acts of Parliament. *Item. 3. p. 6. c. 4.*

Breve de recto, the brieve of richt was used before the Justice general and his deputes in decision of the ground, richt, and property of lands, and reduction of infestments, the quhilk forme of processe is declared at length, in the first buike of *Regiam Adiustacionem*, and in *Quo. attac. c. de brevibus* 31. and be the Lords of Councell and session is decerned not to have bin, nor sit to be thit mony zeires in use, and therfore they find themselves, conforme to the institution of the Colledge of justice, and jurisdiction granted to them, to be judges competent in all causes of heretage, vtr. *Februar. 1542.* *Patrick Weemes contrair Forbes of Reres.*

Breve de morte antecessoris, the brieve of *Mortuostrie*, lib. 2. c. *generalia*, 25. Or the brieve of succession, or of consanguinity, *de jure dicib. c. Natura. 158.* Or brieve *inquisitionis*, *Stat. Rob. 3. c. 2.* Or the brieve of inquest. *Item. 4. p. 6. c. 94.* (Albeit all brieves are inquisitions, because they ar determinat *per inquisitionem patria*, *de Indicib. c. cum quis 1520*) or the brieve of recognition, *breve recognitionis*, *Stat. 2. Rob. Br. c. Item quia 23.* It is the maist necessar, common and profitable brieve or inquisition that is used be the lieges of this Realme, quhairby ane desiris to be served and retoured, as narrest and lauchfull aire to his father or other predecessor. This brieve is raised furth of the Chancellary and persegued be ane appearand aire of perfite age, for recovering of his lands furth of his superiours hands: togidder with all the profits and commodities theirof. *Ley. Forest. c. 6. siberes 71.* The rayer of the brieve at the samyn time suld find caution to perseg and follow

follow the brieve and his claime, conforme theirto. *ibid. 3. c. 6. gen-*
eralia 25. Be the said law of this Realme, the Justice general and The Judge,
 his deputes havand jurisdiction not only in criminal causes, but
 also in civil actions, was judge competent to the service of this
 brieve. *Quon. arrach. de brevibus 31.* But now the samin is ser-
 ved before the Schirriff, Steward, Baillie, or any other Judge, ha-
 ving power and jurisdiction. *Stat. Ro. 3. c. 1.* Or before Judges de-
 legat by commission granted by the Lords of Councell, for the ser-
 ving of the said brieve. *Item. 5. p. 6. 182.* The brieve shal be pro-
 claimed upon fifteen dayes warning *exclusive*. That is, upon fif-
 teen dayes not compand the day of the service of the brieve to be
 ane of them, be sixt persons as heis power be their office or commis-
 sion to proclaim the samin, in ane lauchfull, publick, and conve-
 nient place: That is to say, in the principall Burgh of the Schire-
 dome, Baillery, or other place whair the lands lies; at the mer-
 cat-cross thereof, and in mercat time of day, before two witnesses
 at the least, to the effect that the knowledge theirof, may cum to
 the audience of all parties, havand or pretendand entres theirintill,
 and theirafter the brieve shal be lauchfully execute and indorseate,
 be the Officier, executor theirof, and stamped with his seale or sig-
 net, before the samin be presented in judgement. *Stat. Ro. 3. c. 1. Indorseation.*
Item. 1. p. 9. c. 127. *Item. 4. p. 6. c. 94.* *Item. 6. p. 11. c. 68. in regi-*
stro 16. Nov. 1537. It it necessar and also lesum to the Schirriff,
 or any other Judge of this brieve, to summond certaine persons
 maist worthy within his jurisdiction to passe upon the affise, and
 that upon the space of fifteen dayes, or zit gif he pleasis, upon ane
 schorter time, and gif they be present in the Tolboith or aumon-
 ned, it is lesum to the Judge to compell them to passe upon the
 said inquest. *Item. 4. p. 6. c. 94.* and all sixt persons summond, and
 not compeirand, ar charged at the barre and disobeyand, shal be
 disceerned in the usual law and amerclament of Court: The brieve
 beand lauchfully proclaimed, and the persons of inquest like-
 wise summond, and the day of compeirance being cum: the perfewer
 exhibitis and presentis the brieve deuly execute and indorseate, in
 judgement to the Judge, and desiris him to cause the samin be rett,
 and put to the knowledge of ane affise. Thereafter the Officier,
 executor of the said brieve, be his great arth, tell Greatre judicial-
 ly, that he did entice the samin brieve, conforme to the iudicac-
 tion thereof in all points, and the witnessd inferte therewill, *in*
al-

*Affise shal
 bee sum-
 mond.*

*Production
 and verifi-
 cation of*

the Brieve.

also mak faith, that they heard, saw, and by stude, quhen the said Officier did execute and proclaime the brieve, in sic manner, as is contained in the indorsation thereof: The brieve and indorsation being swa verified, gif ony person havand entreffe, compairis to defend and object against the brieve, he suld have inspection thereof, gif he desiris the samid: And gif he proposis ony relevant exception, declination, dilatation, or peremption: He therby castis and annullis the brieve, either untill ane new brieve be raised againe, or simpliciter in all times cumming: utherwaires, gif he has na reasonable exception or defense to stop the brieve, or gif he compairis not, the brieve fall passa to the knowledge of the assise, *Quoniam attach. o. de brevibus. 13. 3d as making this of mire 2000*

An. Assise Then certain lauchfull men maist worthy, and quha best knawis the verity, to the number of thretene, or fifteene, are chosen in judgement, in presence of the persewer and defender: Or in presence of the persewer, and in absence of the defender; knawin to have entreffe, and being lauchfully summond, and nocht compairand, to the said election, to object against sa mony persons, as he may leasumly stop be the Law, to passe upon the Assise. For like as it is necessar, that he be anis summond: Swa gif he compairis nocht, being lauchfully summond, the brieve suld receive Processe, and passe to the knowledge of an inquest, at the desire of the persewer, in absence of the defender. *Lib. 3. capi Generalia. 35. aſt. Reg. D. a. c. ſciendum eſt. 44. lib. 4. c. Si petens 57.* Qahilkis persons, na lauchfull objection maid against them, suld be received, sworne, and admitted: And therefore are called *Juratores. vid. Boni patrini.* And gif they or ony ane of them be sworne and received, the Judge may continue the brieve to an other day, gif he pleasis, and as necessity requiris: Utherwaires the continuation thereof is nocht leasum, without the consent of the party, after the claime is given in; And in quifition taken in the cause, gif the persons or inquest, being well counſelled and advised, delivers and servis *Negative.*

The claime serves Negative. in favours of the defender, and findis the persewer na waies neareſt and lauchfull aire to him quha dyed laſt Veste, and laſed in the gative. Lands acclaimed: In that case, the defender dois bruik and joyis the poſſeſſion of the ſaid lands, and the persewer is debarred and ſchidid there fra. Bot gif the assise, delivers and servis *Negative,* Service of *as ſaid is, or Affirmative,* in favours of the persewer againſt the deformative. *ſunder, conforme to the clayme in all poynts:* This their anſwere

to all and sondry the points of the brieve, sealed with al their seals, or of the maist part of them, togidder with the seale of the Schiriffe, or uther Judge closed, and the brieve inclosed therein (to the effect the same may be conserued with the answer) is sent backe and retoured to the Chancellary, conforme to the Kingis com-maund, conteined in the end of the brieve. *Stat. Rob. 3. c. 1.* Quhilk therefore is called ane retour. And it is to wit, that there is twa ^{Two kinds} _{of retours.} kindes of retours or aunswers, maid be the persons of inquest, to this brieve, and retoured to the Chancellary: The ane is generall, and the uther speciall: The generall is, quhair na landes or ^{General retour and} _{ten-}ments are specially acclamed or soucht be the persewer of the ^{aire.} brieve: Bot only it is desired, that he may be served and retoured generally, nearely and lauchfull aire to his Predecessour: To the quhilk general claime, ane general retour is maid, be vertue quhair-of, the said generall aire, hes gude richt and title to all contractes, obligations, and reversons, and to moveable aire-schip gudes, quhilkis pertained to his predecessor, and were not discharged or disponed before his decease, in his liege pousties: And sikh-like, perfew and defend quhatsumever action competent to him, be decease of his said predecessor, to quhom he is served aire generall. *8. March. 1540. James Scot, contrair Blair.* The speciall aunswr and retour is, quhen the persewer of the brieve, claimes speciall lands, and the persons of inquest gives ane particular and speciall answer to ilk speciall point of the brieve. *lib. 4. c. statut Dominus 45.* The quhilk is direct and sent to the directour of the Chancellary, to be tryed by him, gif the sam be conforme to the direction and ordour of the brieve in all points. Here it is to be understand, that the lands conteined in the retour, ar halden immedialy of our Soveraine Lord the King, or of ony uther Superior. Gif the lands bee halden of the King in chiese, the directour of the Chancellary, commandis his Clerkes to direct ane precept, under the testimoniall of the great Seale, called the quarter Seale, in quhite Walx, to the Schiriffe of the Schire, quhair-in the lands lyis, commanding him to give saising to the person retoured, or his Actournay, of the lands conteined in the retour: And to take security of the mailles and dewties of the lands, sa lang as they are retoured, to have bene in the hands of the King, or his Predecessours, be reason of warde, or none-entrese, quhairof ane memoriall is made in ane buike called *Responde*, vid. *Responde.* Gif the

Of landes
retoured,
balden of
ane uther
superiour.

The second
precept.

The third
precept.

The fourth
precept of
the Schi-
reffe.

lands retoured be balden of ane uther immediate superiour then the King: The directour of the Chancellary, directis ane precept, charging the superiour to give saifing to the person retoured, of all and sondry the lands contained in the retour: He doand to him therefore all quhilke is oblisched to do be the Law; Quhilke precept, gif the superiour disobeis, beand required personally, or at his dwelling place to obey the samin. And for verifying thereof, ane authentick instrument reported to the Chancellary: Then the second precept, called *Meminimus*, is direct to the said superiour, bearand in effect, that the King remembrand, that of before he gave command to him to give saifing; quhilke command as zit is nocht obeyed, quhairof he mervailes; And therefore zit, as of before, chargis and commandis the said superiour, to give saifing to the person retoured, of the lands conteined in the retour. And gif ane uther authentick instrument be reported to the Chancellary, for verification of the superiours disobedience the second time; The third precept, called *Furche*, is direct, commanding him to give the said saifing, or utherwaies gif he disobeys, the King certifies him, that he will direct his uther precept to the Schireffe to give the samin. In the execution of all thir three precepts, it is not necessary, that the superior sal be personally apprehended: But it is sufficient gif he be sa charged in the execution of ony ane of them. The fourth precept and charge being likewise disobeyed, and the samin obedience lawfully verified, as said is; ane precept is direct furth of the Chancellary, to the Schireffe and his deputes of the Schire, within the quhilke the landes retoured lyis. Makand mention, that the King hes given command be his uther letters, to *N. Barron* and his deputes, that he without delay suld give saifing to the person retoured, or his Aftornay, of the lands conteined in the retour, quhilke gif he dois not, he commandis and chargis the Schireffe, to give saifing of the saides landes, with the pertinents, without delay, saifand ilk mans richt. Quhilke precept being obeyed be the Schireffe, and saifing given conforme theirto; the superiour, who was three times charged of before and refused, be reason of his disobedience, tynis and forefaultis the superiority of the lands quhairof he refusel to give saifing induring his life-time. Quhilke superiority, sall perteine to his immediate superiour, quhiddir that be the King or ony uther. And after his decease, his aire being servit and retoured to the superiority of the samin lands, recovaris

veris the said superiority quhilk his father did tine throw his disobedience. And sa be the law and practick of this Realme; ane superior may tine and forefault his superiority. First, quhen he is entred and saised in the superiority, and being charged be precepts of the Chancellary, refusis to receive his vassall and tennent, served and retoured to the property. In the quhilk case be reason of his contempt and disobedience of the Kings precepts and command, he tynis the superiority, induring his lite-time, without any declaratour, or decret of ane judge. Secondly, quhen the superior is not entred nor saised in the superiority, and is charged be the Lords letters, rayfed be his vassall, to enter within fourty dayis thereto, to th'effect he may enter to the property. The quhilk fourtie dayis being by-past, at the instance of the vassall, he may be decerned be decret of the Lords of the Session, to have tynt his superiority, and to satisfie the party grieved. *Iac. 3. p. 7. c. 57.* And in baith the cases foresaid, the vassall or tennent, fall be entred and hald of the King, or the uther immediate over-lord, to him quha contempnandly disobeyed. Last of all, concerning the giving of *Precepts of saifing*, conforme to *Brieves* served and retoured before *Judges*, *saifing given*, *com- forme to re-* *commision.* Commissioners the forme and ordour of the Chancellary abone written, suld be keiped and observed, and gif the lands retoured be halden immediatly of the King: the precept of saifing suld be direct to the Schireffe and his deputes. For the Lords Auditors of the Checker, Statute and ordained, 8. August. 1528. that in time comming, the Clerke of the Chancellary, upon the Briefe served be ane commission, fall direct the precept of saifing, to the principall Schireffe of the Schire, and make the responcion upon the Schireffes head, notwithstanding the said commission, quhilk is ordained allanerly to have effect, anent the serving of the Briefe, and not anent the giving of the saifing. And true it is, that all saifings past upon precepts of the Chancellary, suld be given be the Schireffe-clerke, or his deputes, for the quhilk the Schireffe fall answer, *Iac. 5. p. 6. c. 77. Mar. p. 6. c. 34.*

Broccarii. In statutis gilde, signifies brokers, mediatours, or intercessours in ony transaction, paction, or contract. As in bying and selling, or in contracting of mariage. In the Civill Law they are called *Proxeneta*, *l. i. & tot. tit. de Proxeneta.*

Bullion, ane French word, *Bilon*, signifies uncunzied silver or gold, quhairof silver or gold, is, or may be cunzied or striken: sic

as Balluna, in Greeke χρυσημη b. e. aurea arena, que ex terra effoditur lib. I. de metallar. lib. II. In the English Lawes it is called Plate. In the acts of Parliament of this Realme, it is statute and ordained: That merchands shall bring hame Bullion, quhair-anent the Lords of the Checker maid this ordinance, At Edinburgh the tenth day of Januar. 1597. In the presence of the Lords of the Checker compeir'd personally, the Provest, Baillies and Thesaurar of Edinb. with certain merchants their nictbors, and gave in their supplication, desiring the A. B. C. of Bullion to be explained, and an sole order to be taken with the expresse quantity of Bullion, quhilk they shall be astricht to pay presently, and in all time hereafter. After consideration quhairos, and conference had at length with them, upon the particularities concerning the said matter of bullion. The said lords of checker, with consent of the saids Provests and baillies for themselves, and their remanent nictbors, and merchands of this Realme, has statute and ordained, that all merchands shall inbring and pay in all time comming, for ilk last of hides, sex ounces bullion: For ilk last of Salmond, four ounce bullion: For ilk four hundredth claih, four ounce bullion: For ilk serplaith of wooll, four ounce bullion. And for all uther wares and merchandise transported be them furth of this Realme, for ilk serplaith of guds, or so meikle as pay is ane serplaith of fraucht: The said Merchant shall pay four ounces of bullion: And untill mair perfite knowledge be had of the just quantity of the serplaith, ordainis twa tunne fraucht, to be compted to the sek: and twa sek fraucht to the serplaith. And the said bullion to be in-brocht to the Cuinzie-house be the Merchands: And payment to be maid to them for the samin, conform to the a&c of Parliament maid thereanent, upon the nineteenth day of December, last by-past.

Ane A. B. C. of the Bullion, set downe be the Lords of Checker, for guds transported furth of the Country: And declared be them, to be conforme to the a&c of Parliament, and the a&c of Checker, above specified.

T He last of drinking Beare	ij. ounce burnt silver
The last of Wheate	iiij. ounce
The last of Beare	iiij. ounce
The last of Malt	iiij. ounce
The last of Rye, and Rye-meale	ij. ounce
	The

The last of Killing, Codling and Ling	ij. ounce
The last of Olie	ij. ounce
The last of Orkney Butter.	ij. ounce
The last of Herring	ij. ounce
The last of Salmond	ijij. ounce
The last of Saipe.	ij. ounce
The last of Ase.	ij. ounce
The last of Pick and Tarre	ij. ounce
The last of Lint and Hempe.	ij. ounce
The last of Iron	ij. ounce
The last of Copper containing fourteene schip pund	ij. ounce
The last of Haist hides, dry hides, and salt hides	vij. ounce
The tun of Wine	iij. ounce
Ilk four hundredth of Claih	ijij. ounce
Ilk leek of Scheip-skins, containing 500.	ij. ounce
The serplaith of Lamb-skins, containing 8000.	ijij. ounce
The serplaith of Cunning-skins, containing 16000.	ijij. ounce
Ilk serplaith of Furtelles, containing 4000.	ijij. ounce
Ilk lek of Gait-skins, containing 680.	ij. ounce
Ilk three chalder of Salt	iij. ounce
Ilk hundredth of Dailies	iij. ounce
Ilk last of Narvis Tallown	iij. ounce
Ilk tun of Lead	iij. ounce
Ilk four chalder of Coales	iij. ounce
Ilk three hundredth of drie Fisch.	ij. ounce
Ilk thousand Ling or Killing in peill	vij. ounce
For ilk four cradle of Glasse	ij. ounce
For ilk sek of Wooll, cont. 24. stanes	ij. ounce
The last of Wax, cont. 24. schip pund.	ij. ounce

Burlaw, Byrlaw. Laws of *Burlaw* ar maid & determined be consent of neichbors, elected and chosen be common consent, in the Courts called the *Byrlaw* Courtes. In the quhilk cognition is taken of complaints, betuixt nichtbor and nichtbor. *lib. 4.c.* The quhilk men sa chosen, as judges and arbitrators to the effect foresaid, are commonly called *Byrlaw* men. It is ane Dutch word, for *baur* or *baur/man* in Dutch, is *rusticus*, ane husbandman. And sa *byrlaw*, *burlaw*, or *baurlaw*, *leges rusticorum*: Lawes maid be husbandmen, concerning nichtbour-heid to be keiped amangis themselves.

C

Cadzon, quhereof mention is maid in the act of Parliament, printed, Iac. 2. 4. An. 1454. c. 31. wrangeously for Cadzon, because furth of the Barony of Cadzon, ane zeirly pension or annuel-rent of 26. pund. 13. schil. 4. pen. was payed to the King in the Checker, as it is manifest in the Schireffe rolles. Iac. 2. 1456. and likewaies in the Schireffe-rolles. Iac. 3. 1487. In the quhilk roll, the Barony of Cadzon is called Hammiltoun, and in diverse others rolles quhere it is commonly called the pension of *Paylay*.

Canum, Cana. In sindry Charters and infestments of lands, specially halden of the Kirk, is commonly used, for the deuty and revenue quhilk is payed to the superior, or Lord of the land, and specially to Bishops, or Kirk men, quhidder it be quheat, beir, aites, or uther kind of victuals, salt, or sums of money, as is manifest. v. l. Feb. 1509. The King contrair the Laird of *Balmonth*. Zit nevertheless, the lands of *Kilconquhair*, lyand within the Schireffedom of Fyfe, ar retoured to be halden be service of ward and releve, payand ane certain sum of silver, *nomine cani*, to the Bishop of S. Andrews: quhilk to be weill done, I cannot affirme: For it is certain, that all lands halden *nomine cani*, payis ane certaine sum of silver, or some uther certain duty, particularly exprested in the infestment. Swa gif that maner of halding be like to the halding be service of ward and relieve: of necessity the samin mon be ane taxed ward, and during the time thereof, the tenent suld pay na mair but the particuler sums or duty conteined in his infestment. **C**anum, appeiris to be ane Irisch word, for *Keane* signifieth the head, as King *Malcolme Keanmoir*, *grandis capite, vel capite*, great head: and likewaies *Kain* or *Chan*, is called tribute, payed be the servand, or subject to the Maister, as I have red in ane auld authentick register of the Bishoprick of *Dunkeld*, quhair it is called *Chan* or *Channum*. And amangis the *Romains*, there was twa kinds of tribute: ane reall, quhilk was impute be reason of the quantity of the lands and guds immovable, quhilk is called *jugatio, quod pro modo jugerum imponebatur*. l. 9. c. de agricol. & censit. l. 4. 1. An uther person quhilk was injoyed to the person, and is called *capitatio, quod pro capite hominis presta-*

tm. d. l. 9. cum l. seq. & ibi gl. l. sacro sanct. 8. c. de sacro sanct. Ecclesi. l. ult. c. de anno. & tribut. l. 9. And in the Evangel, licetne dare censum Cesari. Theod. Beza interpretis, licetne dare capitulationem. Cesari. Aulus Gellius, and uther Latin writers makis mention of them quha was taxed by the head or pow. In Latin *capite censiti*. Sa this word *Cane* signifies the head, or rather tribute or dewty, as *Cane* fowles, *Cane* cheis, *Cane* aites, quhilk is paid be the tenent to the maister as ane duty of the land, specially to Kirk-men and Prelats, quha in the time of their greatnesse and supremacie, used ane forme and style, divers from uthers: and the auld forme of precepts, given in the time of King Robert zit extant, anent the inbringing of the Kings rents, conteininis censum, *Cana*, *reditum*, *customas*. And canage of woll or hides, is taken for the custome theirof. Leg. navium fol. 171. in lib. M. Wilhelmi Skenai, commissarii Sanct. Andreae fratribus meigermani. Specially, quhilk is given for the mending and upholding of the Haven for Schips. Leg. Burg. c. ult. in lib. *Carbraith*.

Campions, ane word commonly used in singular battell: For in auld times, quhen controversies and debates culd not be utherwise decided, bot be singular battell: the parties did either fecht in proper person, or conduced, and fied for wage uthers to fecht for them: quha war called *campions*, because they faucht in *campo*, or in the fields, *de judic. c. 93.* Albeit sumtime they did fecht in the Kings place. Lib. 4. c. stat. 38. And sumtime in the common streites. *Quo. attach. c. apud Dumfries. 59. stat. Alex. c. apud 28.* from the quhilk consuetude cummis the common saying: *Do thou richt, do thou be strong, cheis thou a champion straung*; for this is the Law of Scotland. Because in all actions and quarrels decided be champions in singular combat: That party did win the cause, quhais champion was victorious, and he quhais champion was vanquished and overcum in battell, did tine his cause. *vid. Duellum, gladiatores, or duellatores, ar forbidden. l. unic. c. de gladiatoriibus.*

Catalia, ane French word, *Cattell*, as is commonly taken in the Lawes of this Realme, for all guds and geare moveable. Lib. 2. c. cum quis 52. c. nsurarii, 53. c. 55. ubi res mobiles dicuntur *catalia*: and likewise in the lawes of Normandy, gudes moveable, signifies all things, as possessions quhilk may be removed fra ane place to ane uther, and commonly ar called *cattell*, as horse, claih, gold, silver, and uther sik things, l. 5. c. 1. l. 8. c. 1. Like as *hereditas* or *heritage* signifies all lands and immoveable guds in the said law of Normandy.

lib. 8. c. 1. And also in the Lawes of this Realme, *lib. 2. c. 53. stat. gild. c. item quod quicunque 19. and leg. burg. c. 50. contingat 104.* Gif ane burges decease without ane testament, his aire, and his cattell shall be in the keiping of the kinsmen of the mother side, called *cognati.* And his heritage in the keiping of his kinsmen of the fathers side, called *agnati.*

*The paine of him quha waies it is equivalent to the value of nine Kyc. Stat. Alex. c. apud. is convict 28. Quo. attach. apud 59. quhair it is statute, that gif ony person in battell, or beis convict in singular battel, or utherwise of breaking the Kings protection or peace, he shall give to the King *viginis dnas vacas, & tres cathorios, vel pro qualibet cathorio novem vacas.* It is true, that*

cantherius in Latin, signifies ane gelded horse: fra the quhilk comis cantherius, the Latin proverb, cantherius in fossa, against them quha being unable, and not qualified, seikis and cravis offices, quhair in they can do na mair service nor a horse or horse-man can doe, being inclosed within ane fowrie: and sike like: cantherius in porta, quhen ane horse being led furth of the stable in the port, or in the beginning of his journey, snappers or fallis with his maister: The superstitious people esteemed that to be ane evill presage of the journey.

Carrucata terra, ane French word, for charrow is ane pleuch, atrum, and conteiniis alsnakle an portion or measure of land, as may bee tilled and laboured within zeir and day, be ane pleuch. Lib. 2. c. das 19. Utherwaies in the samin place it is called hilda terra, vel hilda terre, quhilk is ane word used in the auld Briton Lawes.

Carta extensa, or extenta, An chartour quhilk conteiniis ane disposition of lands, with certaine meithes and marches, utherwaies called ane boundand chartour. Quon. attach. c. Statuit dominus rex. 62. ass. reg. D. a. c. statuit per consilium. 36. Stat. Willb. a. 7.

Caupes, Calpes, in Galloway and Carrill, quhairof mention is made in the Acts of Parliament, Ia. 4. p. 2. c. 18, 19. signifiess ane gift, sike as horse, or uther thing, quhilk ane man in his awin life-time, and liege poustie gives to his Maister, or to ony uther man, that is greatest in power and authority, and specially to the head & chief of the clan, for his maintenance and protection, like as for the samin effect and cause, findry persons payis Black-maill to thieves, or mainteiners of thieves, contrair the laws of this realme. Bot in the Iles and Hie-land of this Realme, the Calpes are presently payed

payed be him quha oblisshis him therfore, after his decease. Swa the *Heretelde* is payed be provision of the Law: and *Calpe* is given be speciall paction and obligation, baith the aye and the uther, after the decease of the debtor. Bot the *Heretelde* suld be first payed to the Land-lord. And aye notable oppression is used in taking up of the *Calpe*: For gif the chiefe of the Clan oblisshis him to pay aye *Calpe*: after his decease, aye *Calpe* is payed for him. And also quhen ony of his clanne deceasis, aye *Calpe* likewaies is payed for ilk aye of them, be reason of the promise maid be their maister and chiefe. *Perinde acsi obligatio facta per principem tribus, obligaret singulos ex tribu.*

Cepum animalium, the taulch, creische or fatnes of beastes. *Leg. Burg. c. si quis scienter 71.*

Champert, aye bud, or gift, taken be ony great man, or Judge, fra ony person, for delay of just actions, or furthering of wrangious actions: quhidder it be lands or ony gudes moveable. *Stat. a. Rob. Br. c. dominus Rex. 12.* *Champert* in the Lawes of *England*, is quhen the Judge be himselfe directly, or be ony uther indirectly, mainteinis the pley, to obteine the maintenance of the aye party against the uther; *John Rastall, ver. Champert*, In the *Civill Law*, *paluum de quota lisis*, is unleasum and forbidden, *lib. 5. c. de postuland. lib. si contra 22. c. mandati.*

Chardones, vel Cardones, Cardes quhairwith woll is carded and wrocht. *Leg. Burg. c. de parva custuma 137.* fra the *French* word *Chardon*, from *Cardum* aye thrifill, to the quhilk the Cardes are like in scharpnes and in multitude, or similitude of money scharpe pykes and teich.

Chaud-melle, in *Latine Rixa*; aye hoat suddaine tuilzie, or debaite, quhilk is opponed as contrair to fore-thought-fellony. *Iac. I. p. 6. c. 95. vid. Mellatum. vid. Fore-thought-fellony.*

Checker, and the forme of *Comptes* maid theirin, *vid. Scaccarium. vid. Ballivus.*

Clan-makduff le Iudic. 78. The croce of *Clan-makduff* dividis Stratherne fra Fife abone the *Newburgh*, beside *Lundris*. The quhilk had priviledge and liberty of *Girst*; in sik sort, that quhen ony man-slayer, being within the ninth degree of Kin and bluid to *Makduff*, sum-time Earle of *Fife*, come to that Croce, and gave nine Kye and aye *Colpindach*, he was free of the flaucher committed be him. In the shanes of this Croce, I saw sindrie barbarous

barbareis words and verter written, quibilk here willingly I pre-
termit, and hit sum of them appearis to be conforme to this pur-
pose; *Propter Makidum & hoc oblatum, Accipit simileridem super*
tampade limpida labrum. King David the second, gave and dispo-
ned the Earledome of Fife, with all priviledges, & *cum lege quae va-*
*catur Clan-makduff, to William Ramsay and his aires, quibilk Char-
ter is zit extant in the Register. *Hector Boetius.* 1.12. declaris three
priviledges given to *Mak-duff*, his clanne and family. The first,
that the Earle of Fife suld set up the King in his Chyre, the time
of his Coronation. The second, that in the time of battell, he suld
fecht the want-gard. The thrid, that *Mak-duff* and his clan suld
have the priviledge and right of regality. And I saw ane auld evi-
denc bearand, that *Spens of Wormestoun*, beand of *Mak-duff*is Kin,
injoyed the benefit and immunity of this Law, for the slancther
of ane called *Kynnymouth*.*

Clarmesben, Clarmathan, the Law of Clarmesben concernis
the warrandise of stollen eattell, or gades: for quhen fit gades ar
challenged or repeated be the just awnwers therof: It is statute
and ordained, that all persons, quhi suld warrand the samyn, sal
cum to certaine places, specially nominat and appointed to that
effect, and lauchfully warrand the samyn. *Lib. 1. C. 1. hac sunt loca.*
22. *Stat. Alex. c. de Catallo.* 12.

Clarificatio. Quo. artibz. 1. 10. quis appellat. 46. The purging or
clenging of ane affise. *Aff. Reg. Da. c. 3. Clarificatio debiti* the clear-
nesse of ane debt, quibilk is notour and cleare in the selfe: Or
clearly and sufficently proven and verified, *eg. Pet. et. probat.* 86.

*Clepe, ane Call, ane forme of Clame, petition, or libell, or certain
solemne words used specially in criminall causes.* For sum clames
were conceived simply, without ony solemnity of words, as in the
Brieve of distres, or poynding for debt. *Quon. artibz. 1. 10. brevibus*
31. other claines were libelled and conceived in ane certaine so-
lemn forme, as in pleis of wrang and unlaw, in the quibilk clepe,
and call, was used as ane certaine solemnity of words prescribed
be the Law, and obserued in the practick, as quhen the perswewer
did clepe, and call, the defender with wouth, wrang, and unlaw,
in harming and skaithing of him of sik ane thing, or of sikane
summe of silver mair or less, to his great harme and skaith.

*Culpidach, ane young beast, or Kow, of the age of ane or twa
aieres, quibilk now is called ane Cowdach, or quoyach, quhairof*
the

the price was thirtynye pounds. *Leg. 8. Mai. Mach. 6. 4.* It is ane
Irish word, and properly signifieth ane fuit-follower.

Collistridium. Collistrigium, quod collum strigat. quihilk may be
called Joge, and is ordained for punishment of Baxter. *Leg. Burg.*
c. 6. si aliquis. a si quhair it is called ane Pillory, or Stock, or ony
band quhair with the craig or hals is bound, as the halfe-hang. In the
Lawes of England, Anno 51. Henr. 3. in Latin, Numbre.

Conquestus. Quhair of frequent mention is maled in the laws and *Numbre.*
practicke of this Realm, is different from heritage. Because heritage
signifieth lands and immovable gude, quihilk perteineth to ony per-
son, as dire and univerſall successor to his father, or ony other pre-
decessor, and be the civil law. *Hierodotus. lib. 1. cap. 1. quoniam factus*
in universum ius, quod defensit in hunc. I. hereditas. 26. de regn. juri. *Hereditas.*
Lib. 24. de verb. signifi. And be the municipal law of this Realme,
the eldest son succeedis, *Iure univerſali in universum hereditatem pa-*
*tris sui. lib. 2. c. 2. cum quis 29. conquestus, signifieth lands quihilk ony per-
son acquiris and possedit privato iure, vel singulari ritulo, veluti di-
noscimus, vel singulari aliquo contractu lib. 2. c. 2. cum vero 28. quihilk is
conforme to the civil law, ubi conquestus dicuntur lucrum, quod ex emptione,
venatione, locatione, conductione, vel generaliter ex opera omnis descendit.
lib. 2. c. 2. et. c. 3. seq. ff. p. 10. Socio. *Ex de jure bnsu regni, conquestus*
causibus liberi hominis legitimis, qui moritur de ipso successu hereditatis,
successione de corpore suo, gradatim ascendit: hereditas vero gra-
datim descendit. Stat. Wilh. c. notandum 24. leg. Burg. c. sciendum
155; Stat. Rob. 3. c. 3. vid. Pastinacu. And it is to be observed, that
gif conquestus lands, after the decease of the Conquerour, dois anis
ascend to ony person, quihilk after happens to decease, the samyn
lands fall descend at heretage to his neareſt afre, because conquestus
dois allener anis ascend, and thereafter perpetually descendis
to the righteous afre, gif ony be: *Quia conquestus dicuntur ratione*
primi conquiftris, & cum transmittitur ad eius heredem, ex his natu-
*rum conquiftris, & induit naturam hereditatis.**

Coroner. Crowner inquires be ane inquest anent murther and
slaughter, done and committed quietly. The quihilk inquisition
sild be taken in the hie streetes. Or in open places, in *corona populi*,
for the quihilk cause hee is called *Coronator*: or zit because
the violend death of the subjects pertaines to the Kings Crowne
and power. *Quhairquen the Crowner takis inquisition, as said*
is. D. Thomas Smith, Lib. 2. c. 23. of the Common weyl of

England, Reade the English Lawes. Anno 4. Edm, 1. v. 2.

Creffers, or bora pororum, ane crufe, or ane swines crufe. Leg. Brug. c. Non licet. 87. quhilke in sum anent buikes is called ane Sty.

Gro, Croy, in the actes of Parliament. Iac. 1. p. 2. c. 63. is a satisfaction or assilment for slaughter of ony man, The quhilke the Judge suld pay to the narrest of his kin, in case he minister not the law as he suld doe. Iac. 1. p. 6. c. 89.

Colrach, sumtimes is called ane furth-cumand-borgh, bot mair properly it may be called ane back-borgh, or cautioner. For quhen ony havand power or jurisdiction repledges ony man fra ane uther mans court, to his awin court, he suld leif behind him in the cour, fra the quhilke the replegiation is maid, ane pledge or cautioner quha salbe bundin and oblisched, that he quha usis the replegiation, sal doe justice within zeir and day in his awin court, to the partie complainand, upon the person quha is repledged. Quhilke cautioner left in the court be him, and behind him quha usis the replegiation, is called. Culrach. lib. 4. r. si quis in alterius 20. Q. 6. attich. q. 3. mod. ten. cur. c. 12. do Ind. c. 28. And gif the party complainand gettis na reason in that court, to the quhilke the defender is borrowed and repledged, he sal have regres againe to the first court, fra the quhilke the replegiation was maid, and their sal the mute and pley be ended, and the Culrach salbe in ane unlaw, gif the party persewed compeiris not, and he quha usid the replegiation, and did not Justice, sal tine his court for zeire and day.

*Curia aunc Court, quhairof sum are superiour and sum inferiour. Leg. Malc. Mak. c. 4. vide amerciamentum. The supreme court is the Parliament, quhilke hes jurisdiction of all matters Ecclesiastical, Ci-
vill, and Criminall. All courts byand attour the ordinar persons of the Judge, the persewer and the defender suld have certaine uther persons and members, quhilks ar called *claves curie*, the keyes of the court, that is, ane lauchfull Officier or Serjand, quha suld summond, attach, and arrest the parties. Ane lauchfull Clerk quha suld informe the Assise, and the Dempster, and hes the ture and keiping of the Proces. Ane surour quha wardis and pronounces the waird, and interlocutour of the Court. Ane Dempster or Doomesster quha gives the doome or sentence definitive, conforme to the information of the Clerke or the Judge.*

Curia christianitatis. lib. 2. c. 2. debet autem. 37. l. 1. C. placitum. 17. Is called the Ecclesiastical jurisdiction or court, utherwais, Forum Eccle-

Claves curie.

*Ecclesiasticon. 1.1. c. 3. curia christianitatis oppositus laicis seu saeculari.
1.2. c. cum aliquis 59. 1.3. præterea, 23. For unto the ane perteinisthe
Ecclesiastical, and to the uther the temporal or secular jurisdiction.*

Curialitas, curiality, curtesie, from the French *Curtoise*, civility, gentlenesse, humanity: For the law of curtesie, is ane gentle and favourable ordinance or constitution, granted and observed in this Realme, and not universallly kelped, or used in uther Cuntries; And therefore it is called *Curialitas Scotorum*, the curtesie of *Scotland*. And in the laws of *England*, *lex Anglia*, or the curtesie of *England* within the quhilke twa Realmes, and nane uther, this law is in use: That is, quhen ony man maries lauchfully ane wife, and receivis land and heritage with her; and it happen that he beget with her ane bairne, quha being borne, is heard cryand betuixt fourre wals of ane house; And thereafter his wife deceasis before him, he fall briuke and posse all the lands quhilks pertained to her, induring his life-time, albeit the bairne live or decease. *Lib. 2. c. cum itaque 58.* The bairne The Bairne being son or dauchter maill or semaill de *Indic. c. Maritagliam. 127.* Quhilks law hes place in lands and heritage, lyand without burgh, haldene of the King or ony uther superior: And also in lands and tenements lyand within burgh, and haldene in free burgage. *Leg. Burg. c. 58. aliquis 44.* This law is not introduced in favors of the wife or bairns, bot is maid in favors of the husband allanetly. And therefore it is not necessar that he have ony laising infestment, or uther richt to the lands, quhilk pertained to his wife heretably; The husband Bot only the benefit & priviledge of the curtesie, quhilk is valiable and sufficient to him induring his life-time, for briuking, and possessing of the lands, and for remooving, out-puteing, and in-putting of tennents, in sik manner, as gif he were proprietar, life-rentar, tackef-man, or rentaller. And mairover, the Law of the curtesie is extended in favour of the second husband. And therefore, gif ane man maries ane heretrix, and after his decease, shée marries ane second husband, and beare to him ane sonne, or ane dauchter, and thereafter shée deceases, her second husband aucht and suld briuke and joyis the priviledge of the curtesie, in sik manner, as gif the first husband micht have done, in-case his wife had deceased before him. *Lib. 2. dis. cap. 58. de Indic. Cap. 127.* As concerning the estate and qualitie of the woman that is The wife maried, it is necessar that she be heretably infest and laised in the lands asaire to her father or uther her predecessore. Bot it is not necessarily required, that shée be ane virgin and maiden; because

the curtesie perteineth to the second husband, quha maries ane Widow, as said is. Alwaies, quhiller the wife be widow, the time of her second mariage, or virgin and maiden, the time of her first mariage, necessarily she shuld be ane heretrix, aire, or universall successor to her father, mother, or to sum uther of her predecessors: For gif the wife hes onely richt and title to the lands and heretage, as singular successor, be vertue of ony contract, *velutis titulo emprobis*: Her husband after her decease can never claime richt to the lands, induring his life-time, be the curtesie of Scotland. 28. Jan. 1595.

Robert Lundie of Balgony: contrair Robert Balfours of Dospene.

The Bairne. The curtesie hes not place quhen na bairne is borne in lauchfull mariage, for it is necessar that ane bairne be borne mailly or femally, quick and liveand: And for probation theirof, hee may be heard cryand, for the curtesie hes place in *peru clamare*, (or as it is writte in sum buike) *brayand*, *squeiland*, or loudly cryand. For in French, *brayer*, in the Latine *vagire*, is to cry or greite with ane loud voice. Quhilk word in our language, is also attributed to Horse, Harts, and uther beasts. And gif controversie arise anent the life or cryng of the bairne, it is leasum to the father to pruise the samyn by twa lauchfull men or wemen, quha heard the bairne *clamare*, *plorare*, *vagire* son *brayare*. *Leg. Burg. d. c. 44.* The husband, father to the bairne, shall bruik the curtesie after the death of his wife, albeit the bairne being borne quick, happen to decease immediatly, or shortly after his nativity. Or albeit the bairne and the mother baith depart this life; For suppose the bairne happen to decease before his mother, and she decease thereafter, or albeit baith the bairn and the mother decease at ane time, or zit gif the bairn livis, & the mother before the husband depart furth of this life, the husband survivand after her death, shall bruik the priviledge of the curtesie of al lands, quhairin his wife was heretably infest: 9. Jul. 1597. *Martha and Eupheme Mackalments: contrair Maister James Ward-law Advocate.* Swa the substantiall heads of the curtesie are thir following: quhairof gif ony ane failzie, the curtesie ceasis. First is required ane lauchfull mariage betuix man and wife. Secondly, the wife shuld be ane heretrix, havand *jus universale*, quhairbe she succeedis to her father, mother, or sum uther her forbears. Thirdly, she shuld be heretably infest and saised in the lands. For gif she decease, not beand entered and saised, her husband shuld have na courtesie. Fourthly, she shuld decease before her husband, for sa lang as she and the husband livis, he has *jus mariti*. And after her decease, he has *jus curiatis*.

1444. Fiftly, Baimes suld be lauchfully gotten and borne, at the least ane bairne, maill or feinaill, quick and livand. Last of all, the curtesie is als effectuall to the husband, touching waird-lands, pertaining to his wife, as the Kingis confirmation. For lands halden of the King in chiefe, and confirmed be him, fallis nocht in waird, induring the life-time of the person to quhom the confirmation is granted. He being thereby immediet tenent to the King. And like-waies, gif ony man maries ane heretrix of waird-lands, and after her decease her aire is *Minor*, and of lesse age: Neverthelesse, the lands fallis not in the superiours hands, be reason of ward. Bot the husband suld bruike and possesse the lamen, induring his life-time, be reason of the curtesie of this Realme. Because the iche of the waird perteyning to the superiour, ceasis quhair the curtesie belan, gand to the husband his place. *Penult. Februar. 1553. George Gordie, contrair the Lord Melvyn.* And zif the husband being onerly life-rentare may nocht sell or anaily heretably the said lands, or ony part thereof, in hurt and prejudice of the richteous aire. *Leg. Burg. c. 44.*

Disclamation is used in the Law, and practick of this Realme, *Clamare.* *Clamare* idem est quod dicere, affirmare: As *clamare aliquod tenementum*, aut aliquam terram esse nam, to claime and affirm ony heritage or lands to his awin. *Clamare aliquam dominium*, to claime, avow, and affirm ony man to be his maister or superior, to quhom he sucht service, and of quhom he haldis his lands in chiefe. *Disclaimare* is to disclaime, disavow or deny, as to deny ane uther to be his superior; as quhen the superior affirme the lands to be halden of him, and the vassall denies the lamen: In the quhilk case, gif the contrair be found of verity, the vassall tines and amittis all the lands quhilk hee haldis of that superior, and the propertie thereof returnis to the superior, *de maritag. c. 18. Stat. Rob. 3. c. primo 20.* Quhilk the suld forme and maner of disclamation is declared. Mairover, disclamation is quhen the perseuer claines lands perteynand to him, and haldis of ane superior: and the defendant affirmis the lamen to be halden of ane uther over-Lord. *Lib. 1. c. 1. let.*

let. 26. lib. 3. c. tali. 18. To the decision of the quhilke controveſie, baith the taids alledged over-lords ſuld be called. And he quha failzies to proove himſelfe ſuperior, ſhall never be heard to claime the ſamin afterward, and the vaffall being conviēt, tynis the land and property thereof, quhilke is adjudged to him, quha was wrangouſly denied be the ſuperior, and is found to have richt theierto.

3 Lib. 1. c. ſi verò 28. Laſt, the vaffall tynis and ſorefaultes his lands, giſ he wrangouſly denies his few, or the condition thereof, that is, the ſervice aucht therefore, conforme to the French proverbe, *Qui ſief denie, ſief pert.* The reaſon is, because the vaffall denyand his holding his maister or lands, contemnis and dishonours his maister. Bot it is neceſſar that the vaffall or tennent deny fraudfully, that is, wittingly, *Quia vaffallus feendum quod ſcienſ abneガavit, amittit: ignorantis vero ſubveniatur. Quod ſi dubitat, dubitanter reſpondere potest.* *Cuiacius.* l. 4. de feendum. tit. 8. & tit. 21. & tit. 39. de poena negantiis feund.

Disfracionare, from the French word *Disfrener*. In Latine *Duelare*, *Duello contendere*, to ficht in ſingular battell, and commonly is understand of the appealor, or perſewer, *Quia cum vadiſatur duellum, provocans dat vadium diſfraciona di*, & defendens *vadium defendendi*. Sumtime *diſfracionare* is mair generally taken, for to tine ony thing in judgement be forme of proces, concord or aggrieance. l. 3. c. cum ita que 14. l. 2. c. ſieri autem 67. *Quo attach.* c. 4. Item, it signifies to prove ony thing conforme to the conſideration of the Court be battell, writ, or be ane affiſe of the contrie. l. 1. c. ſi verò 18. c. ſi verò. *Dominus 29. Iter. camere. cap. apparenſ 24.* Or be the aith of the party, and certaine conjuſatours quhilks ar called *Sacramentales*, quha sumtime maa, and sumtime fewer in number makis faith and ſwearis in ony cauſe with ane party havand entres in perſuite or defence. *Cuiac. lib. 1. de feund.* And in the Lawes of this Realme, *Dicitur aliquis jurare cum certa, ſeptima, duodecima manu. Quihen three, ſeven, or twelue persons ſwearis with him, quhilke in the Canon Law is called *Purgatio Canonica.**

Sacramen-
tales.

Diffafina, *Safina* is ane French word, and ſignifies poſſeſſion, to the quhilke *Diffafina* is contrare, and ſignifies diſpoſeſſion, quhair ane person beand in poſſeſſion of ony lands, as maillor to his maister, or havand ony uther title thereto in writ, is wrangouſly ejeſted and put fra the ſamin, without ony warning or ordour of Law. Like-wiſe *Diffafina* is called ſpuilzie, quhen ony person

Ejection.
Spuile.

is spuylized violently and wrangonously of moveable gudes and geare, pertaining to him, as his owin proper gudes; and being in his possession certayne dayes or monethes. For ejection concernis lands and gudes immoveable: And spuylizie is of catrell and gudes moveable. And baith the ane and the uther is comprehended *Diffusio*, *ass. reg. David. cap. Statutum fuit. 31.* Quhilke is conforme to the English Lawes. *Henr. 3. stat. de Mortuou. c. 3.* And to the lawes of France. *Molinens in styl. curi Parl. part. 3. c. 18.* And be the auld Law of this Realme, *Diffasitor*, or committer of spuylizie or ejection, being convict thereof, suld pay ane unlaw of ten pounds to the King, *Stat. Alex. c. Stat. 7.* And may be accused criminally before the Justice and his deputes. *Jac. 5. p. 4. c. 33.*

Disparagium, like as *parage* is called equalitie, from the Latine word *Paritas*: Swa *disparagium* is called inequality in bluid, honour, dignity, or utherwaies, from the word *disparitas*. *Leg. Forest. c. de hered. 64. cum seq.*

Dissolucion, ane Latine word, quhilk signifies lowfing of that thing quhilk was bound of before: and like as lowfing is contrair to binding: swa dissolution is contrair to annexation, specially in the Kingis property annexed and united to the Crowne. For the famin being dissolved is maid lowfe, and free of that nature and quality, that it may be annalied and disposed to fik as pleasis his Highnesse, with certaine conditions and provissons. *Dissolucion* of the property is maid to the effect the famin may be fauld and annalied be the King, and therefore cannot be lauchfully maid in his minority, *Jac. 6. p. 14. c. 203.* For like as the King being *The King in his minority, may not dissolve his property.* nor may not sell his property: even sa at that time, it is not lesoun to him to doe ony thing that may be ane preparative to the alienation theirof. And likewise, gif ony man have and heritable infestment or uther richt to ony part of the Kings annexed property, for the crime of treason is forefaltet: and theirafter be the three Estates in Parliament, is restored in the minority and leffe age of ane King. Albeit this restitution may rehable his person: Zit is na sufficient richt to repone or restore him againe to his richt of the laid annexed property. For like as ane dissolution maid in the Kingis minority is null: Even swa, ane restitution maid in his leffe age, concerning his annexed property, is of nane avall: for the dissolution, and restitution are baith of ane nature, and producis ane effect, hurtfull and prejudiciale to the King, *in Registro, 18.*

Quibus and
be quibus
dissolution
sulb bee
maid.

To quibus
may the
King set his
property.
Dissolution
is temporall.

Disposition
of lands
dissolved, is
perpetuall.

The disso-
lution be-
ing ex-
pired, the an-
nexation
begins to
quicken,
and revive.

The King
may set his
propertie in
Parlia.

few ferme
allannerly.

Julii. 1497. The Kingis Advocate contrair *Alexander, Lord Hume,* and tennents of *Dunbar*. And sa it is manifest that ane dissolution of the annexed property, sulb be maid be ane King in his majority, in ane Parliament, with consent of the three Estates. *Act. 6.p. 15.c. 233.* Bot ane annexation may be made in Parliament in the Kingis minority, *Quia rex eodem modo quo quolibet minor conditio- nem suam potest, meliorem facere.* It is leasum to the King, after the dissolution, to set his proper lands annexed, or un-annexed in few-ferme to ony of his lieges, and specially to the kindly tennents and possessours thereof, as he pleasis. Dissolution induris onely for the life-time of the King, maker and author theirof, and quhen he deceasis, the same ceasis and endis. And therfore the samin beand temporall, and personall, his sires and successours may not set ony annexed lands in few-ferme, be vertue of ony dissolution, maid be his father or predecessour. Albeit dissolution be temporall, as said is, zit the lands set and disponed heretably after the dissolution, remainis perpetually with them and their aires, to quhom they are disponed, after the forme of the conditions, contained in thei infestments. And swa the alienation and disposition lauchfully maid, is perpetuall, & *transitoria ad heredes*, albeit the dissolution be temporall and personall, as said is. The dissolution expyrand and ceasand, be the decease of the author thereof, as said is; All the lands annexed of before, returnis againe to the forme and nature of the annexation: Sa that the same may not be set in few-ferme, nor annalied be the King, succeedand to him, quha maid the dissolution, untill ane new lauchfull dissolution be maid thereof be himselfe. In respect that all annexations of their awin nature are perpetuall; and albeit, they may be interrupted and stayed, for ane certainte space, be ane dissolution; zit after the end thereof, the annexation dois quicken, revive, and walken as it were out of sleepe, and returnis to the awin perpetuall nature, and swa remainis untill ane new dissolution be maid.

The King, after ane dissolution, may set his lands in few-ferme allannerly, and not in blench, or *nomine alba firma*, nor be service of ward and relief, or utherwaies, bot in few-ferme, as said is. *Act. 6. 15. cap. 234.*

The King may not set his lands in few-ferme, except the samin be done with express augmentation of his rentall: That is, his gressumes, customes; burrow-mailles, fermes, mantes, mutton, poultry,

poultry, avarage, cariage, or ony uther ^{ow}ties and service : Quhilk ^{The Kings} is not onely manifest in the alienation of the annexed properte : ^{rentall of} ^{the proper-} ^{ty, baith un-} ^{annexed} Bot likewise suld be observed and keiped in the disposition of the un-annexed property. For it is certaine, that the Kings of this Realme, the time of their Coronation, makis ^{faith} solemnly, ^{and annex-} ^{ed, suld be} augmented. that they shall not annaly, transfer, nor dispone the richt and rents of the Crowne : As it is statute be *David 2. 6. Nov. 1357.* And ^{augmented.} sa as the King may not sell the richt of the Crowne, na mair may he annaly the rents thereof, quhairof the un-annexed property is ane part. Mairover, albeit ane dissolution is not necessar in the alienation of the un-annexed property (because that quhilke is not bound, requiris na lowsing) zit in al dissolutions maid be Kings of this Realme, expresse mention is maid baith of the annexed & un-annexed property, to be set in few-ferme, for augmentation of the Kings ^{rental}, quhairby it is certaine, that the ane, aswell as the uther, being set in few-ferme, cannot be dispone in diminution of the rental. And concerning that quality and condition, expreseed in the forme of all dissolutions ; the un-annexed, and annexed property are of like nature : *Et in hoc casu pari jure censetur* : So that neither the ane, nor the uther, may be dispone with diminution of the rental, utherwise the mention of the un-annexed property, in the acts maid anent dissolution, were superfluous. Thir are the substantiall conditions, expreseed in the dissolutions of the property, maid be the Kings of this Realme, quhairof, gif ony ane be not observed, the alienation and disposition maid after the dissolution, is null and of nane availe. *Iur. 6. p. 15. c. 236.* By and attour, the forme of dissolution abone expreseed ; It is leasum to the King, with advise, deliverance, and decret of the haill Parliament, and for great, seand and reasonable causes concerning the weill-fare of the Realme : First advised and digestly considered be the three Estaites ; To sell, annaly, and dispone the Kingis annexed property. *Iam. 2. pag. 11. cap. 41. Iam. 5. p. 6. c. 84.*

Dos has twa significations, First it signifies that quhilke is given to the husband with the wife, be reason and in contemplation of marriage. In the Civill Law is called *Dos*, in our municipall law, *Maritagium*, *Tocher-gud*. *Lib. 2. c. Dos autem 19.* Secondly, *Dos* is ^{Maritag-} ^{um.} taken for that gift and disposition of lands and tenements, quhilke ^{um.} ane man givis to his wife, quhe he maries her at the Kirk-dure, or in

the face of the haly Kirk: *Quhilk* acht and fuld be ane reasonable thrid part of all and haill the tenement of land, *quhilk* the man or husband hes the time of the desponsation or mariage, *Lib. 2. c. 2. D. 2. autem. 19. c. 30. lib. 4. c. 4. 49. Stat. Alex. c. 8. de Insc. 163.* And is given in recompensation of the tocher, payed be her, or in her name, to her husband: And therefore is called *antidot*: *Cornel. Tacit. callis D. 2.* that *quhilk* the husband gives to the wife, and not that *quhilk* the wife gives to the husband. *Livius lib. 3. callis it, munus nuptiale.* In France it is called *Dotalitium*, or *Doarium*. It is given to the woman, to the effect that after the decease of her husband, she may sustaine and nourish her selfe, induring all the dayes of her life-time: Therefore it is called *Vitalitia*. *Morganaticum* from the Dutch word *Morgengah*, morning-gift, is ane kinde of dowrie, in the second signification, and signifies the gift of gudes moveable or immoveable, *quhilk* the husband gives to the wife, the day or morning after the mariage, and commonly is used in the Dutch lawes, in *speculo Saxonico*, & *Landrech*, in *Grecce* *σωστα*, in Latine *matutinale donum*. *Cujacius lib. 4. de fund.*

Dotalitium,
Doarium,
Vitalitia,
Morganaticum.

Ducum. Duorum bellum vel plurimum, singular battelli or combat: vide Campiones. Noble persons, or landed men, may fight in proper person, or be others in their name, *qua* ha ar called *Campiones*. In Latine, *Duellatores*. Specially, sif as are their awin bondmen or tennents, *qua* ha in body and guds ar under their Maisters protection and maaintenance: And therefore fuld hazard and employ the famin in the defens of their Maisters honour and actions. Bot-husband-men, ignoble, and unlanded-men, fuld fight personally, and not be *Campiones*. *Aff. Reg. cap. Statutum fuit per legem. 32.* Bot all men that are decreped, lamed, mutilat, or paffed the age of threescore zeires, are excusid from singular battell. *Leg. 4. c. 4. leg. Burg. c. Si burgenfis 24.* And sif like, religious persons, clerkes and weemen may not be compelled to fight. *Lib. 4. c. 3. stat. Alex. c. 5. Aff. reg. Dav. c. statut dominus 38.* It is in free-will and election of the defender, to fight, or passe to the knawledge of ane *Affise. lib. 4. c. 2. Quia defendens debet primò eligere, deinde vadire, & postea jurare. lib. 4. c. 1. lex statut 46.* The appealer or prover, fuld sweare that his quarrell is just, and the defender sweare the contrair, avowand the equity of his cause. *Iter. camer. Comparatis 29.* It is not leasum to ony person to provoke ane other to battell, or being provoked to fecht without licence of the King, uthers-

utherwaies, baith the appeler and the defender tiris and forefalsis all their gudes moveable and immoveable, *de Indic. c. 87.* Because na Barrone hes power of singular battell, or of probation be water or iron; except the Kings Schireffe, or his deputes, be present to see justice done. *Stat. Alex. c. praterd. 32.* Mair-over, gif ony man havand the Kingis licence, happenis to bee convict be battell, or of breaking of the Kings peace, he shall pay to the King *xxii. Ky & tres cathrios, vel pro quolibet cathorio, novem vaccas.* *Stat. Alex. c. apud. 28.* Quhilk paine and unlaw, appears to be ordained, to stay sikk ungodly strife and debate; for the law of singular combat is ungodly, and suld not be used amang Christianes, albeit the same was permitted and used be the *Longobardes*, in civil and criminall causes. *Alciat. de sing. certam: Cuijac. intib. fendo-rum.* Quhilk is conforme to the Canon law, *cap. I. 2. de purgat. vulgar.*

Dyour, Dyvour, utherwaies Bair-man, quha being involved and drowned in debts, and not able to pay or satisfie the same: For eschewing of prison and uther paines, makis cession and assignation of all his gudes and gear, in favours of his creditours: And dois his devor and dewty to them, proclaimand himself Bair-man, and indigent, and be cummand debt-bound to them, of all that he hes. *Leg. Burg. c. 1. Bair-man. 144.* In Latine, *Cedere bonis, quhilk Cedere bonis, nis.* *Bankrupt, or Bankrompt:* Because the doer thereof, as it were, breakis his banke, stall, or sear, quhair he used his trafficque before. *De Indic. c. Bair-man 46.* Be the Civill law, sikk cession of gudes and gear may be maid judicially, or forth of judgement, be him quha is present, or abent, be writ or epistle, or be ane mid-person, called *Nuntius l. ult. decif. bonor.* Bot to the effect that debtours suld be feared to deceive their creditours, and suld the mair willingly pay their debts, in sundry places, diverse shamefull formes of dyvourie, ar used and observed: for sum-time the debitor naked, sittis upon ane cauld stane, in presence of the people. *Alciatus lib. 3. Parerg. c. 47.* Sumtimes his hinder parts, or hips are dashed to ane stane. *Guido Pape decif. 343.* or in publick place, bair-headed, his Belt is cutted, quhairby he is proclaimed indigent of gear and credit: And therefore may passe and repasse quhair he pleasis, without ony trouble of his creditoure. *Iuxta illud Horatii, Epistola secunda. Ibit tò quò vis, quis zonam perdidit.*

Conform to the quhilke, in this Realm, he is said to have his belt cutted, *Zonam perdere*, quha hes na gold, silver, gudes nor geare. For in auld times, like as it is zit used in divers places, ilk man carryed his silver and his gold in his belt, either in ane purse hanging at the end thereof, or sewed and inclosed within the famin. *Sueton. in Vitellio cap. 16.* *Quia zona aureorum plena se circumde- dit.* *Et Gracchus apud Gellium. Lib. 15. cap. 12.* *Zonas (inquit) quas plenas argenti extuli, eas ex provincia inanes retruli.* And in the Evangell of Saint *Matthew*, Chapter 10.9. *C H R I S T* commandis his Apostles nocht to possesse gold, silver, or money in their girdles. Mairover, the forme of the aith quhilke by the Lawes of this Realme, the Dydour suld make, conteiniis that he fall sweare, that he hes nocht in free geare, above five shillings four pennies: Era the quhilke cummis ane comoun speech daily used amangst puer and indigent persons, quha hes not in gudes nor geare the value of five shillings and ane Plack. In the Law of *Normandie*. *Lib. 2. cap. 10. lib. 12. cap. 21.* Dydoures are called *Banquerouers*. And gif they doe the famin fraudfully, they may be punished to the death.

E

Corbita
Cucurbita
Arga.
apud.

EN A C H, *Lib. 4. c. statut dominus 64.* Ane mendis or satisfaction for ane fault, crime, or trespass. As gif the maistres lyis with the wife of his bond-man or slave: The servand therefore fall be put to liberty, and fall receive na ~~other~~ *Enach*, mendis, or satisfaction for the violation or defowling of his wife. *Lib. 2. c. pluribus 14.* Like as utherwaies, *si vassallus Cucurbitaverit dominum suum*. That is, gif the vassall makis his maister ane Cuckold: That is, gif he hes carnall copulation with his maisters wife, he tiris and forsaltis his landis. *Lib. 1. de Feud. Tit. quib. mod. Fendum amittatur. scilicet 2.* *Corbita*, in the lawes of the *Longobardes*, is Adultery: And *Cucurbita* signifiess ane Cuckold, quha his wife is ane huir: quha utherwaies is called *arga*. *Gl. in D. scilicet 2.* From the Greek *apud-sidiose, otiosu*, quha littis idle, and payis not his debt, bot suffers ane uther to woork his labour. *Alciatus in lib. de singulari certam. c. 32.* & in lib. *problematum*, *Horatius sequuntus Cucullum vocat.*

Enchesone,

Enchesone, the cause, occasion, or reason, quhair of ony thing is done: As quhen we say, that ane is condemned for Encheson of thieft, That is, be occasion or be reason of thieft, committed be him. *Mod. ten. cur. c. 21.* Or that the vassall is in the keiping of his overlord, be Encheson of ward. *Quor. attach. c. 51.* And ane action or pley, may be advocate fra the Schireffe Courts to the Kingis Court, for money causes. *Lib. 2. c. Dos autem 19.* Quhilk in sondry English buikes, is said for mony Enchesons. And *Ead. 11.* King of England. *Westm. 1. c. 6.* Statutis and ordainis, that na man fall be ane merchand, without ane reasonable Enchesone.

Eneya. Pars hereditatis, ane French word: for the first, chiefe and principall part of the heritage. *Leg. Forest. c. 51.* *Hæreditas 96.* For in the French tongue, and specially in the Law of Normandy, the eldest and first begotten son, is called *l'ainé*. And in the Lawes of England. *Hen. 3. in stat. Marlbrig. c. 9.* It is called *Entia pars hereditatis*. And likewise in ane uther place of the samyn King, *Ius ejusdicta*, quhilk in this Realme is the law of birth-richt: In Latine, *Ius primogenitura, de quo Tiraquellus copiæ scriptus.* Be the auld Civil Law of this Realme; there is na richt of succession in the richt line ascendent. And therefore the father succeedis not as aire *De jure* to his son, except speciall provision be maid in the contrair. *Quia successio provisio hominis tollit provisionem legis. Et postea conuenientia, legem contrahit.* *trahentibus praescibunt.* Swa all succession, is either in the richt line descendent, or in the line collaterall.

De linea recta descendentiis.

They quha ar of the richt line descendent, suld be preferred to all uthers: As the son, the daughter, the Neupoy, the Neipce, and sa descendand *in infinitum*; observand and keipand alwaies the prerogative of the degree. For the *Prior* degree, excludis the *posterior* from all commodity and title of succession. As the son in the first degree, excludis the nepuoy in the second, and the nepuoy excludis the pronepuoy in the thrid degree.

Gif ony man havand lands and heretage deceasis, leavand ane sonne allanerly behind him, without all distinction, the son succeedis to all and haill the heretage, quhiiks in Latine, *successere in asem, vel ex ase.* *Lib. 2. c. cum quis 29.* *De filio.*

Gif ony man deceasis, and leavis behind him maa sons nor ane, either

¶ filio.

either he is *successor*, and haldis not his lands be service of ward : and then his heretage is divided amangst all his sone: or he is *Miles*, and halds his lands *per servitium militare*, be service of ward and relief. In the quhilke case, the eldest son succeedis in the haile lands ; quhilke heretably pertained to his father. *Lib. 2. c. Si quis plures 30.* Bot this distinction is not observed be the practise of this Realme. Be the quhilke the eldest son succeedis to his father, *ex ase*, that is, to all and haill his fathers heretage and lands ; Albeit, fydry uther Nations hes diverse lawes here anent : Like as bethe Law of God, in the auld Testament, amangst the Jewes, the first-borne son, after the decease of his father, receivis double portion, *Deut. 21.17.* That is (as some interpretis) als meikle as twa of his brether, *Iosephus de Antig. Ind. lib. 4. c. 8.* writis that the eldest sonne, be reasoun of his birth-richt, suld have *duplicem facultatum paternarum partem*, the double part of his fathers gudes.

*De filiis di-
versarum
uxorum.* Gif ane man had diverse wives, quhair of ane is ane heretrix, ha-
vand lands pertinande to her heretably, and hes procreat upon ilk
ane of them bairnes, maill or femaill ; the sonne gotten upon her,
succeedis to her heritage, *lib. 2. Si autem 31.* For as generally the
son succeedis to the father ; Swa in this case, the son suld succeed
to his mother. *Leg. Forest. c. Si quis habuerit 26. de Iudic. c. 24.* Con-
forme to the common rule of the Law, *Paterna paternis, materna
maternis.*

*De filia vel
filiabus ex
codem vel
alio matri-
monio.* Quhen ony man deceasis, leavand ane son, and dauchters ane or
maa ; The son allanerly succeedis to all his fathers heretage, *Lib.
2. c. Maritus 32.* As gif ane man hes procreat with his first wife,
dauchter, ane, or maa, and after her decease, begettis ane son, up-
on ane uther wife, the son only succeedis to him. *Leg. Forest. c. Si
quis habuerit 26.* Because the son borne of the first, second, or last
wife, succeedis as univerfallaire to his father, and excludis all his
sisters. *De Iudic. c. Item nota 115.* As it is written in some buikes,
Famina non succedit cum masculo.

De filiis. Failzieing sons and bairnes, lauchfully gotten of their bodies
the dauchter succeeds. For gif the defunct hes ane dauchter allan-
erly, she suld succeed to all her fathers heritage, in the forme and
maner, as the son succeedis to his father. *De Iudic. c. Item nota 115.
Lib. 2. c. Harenum 28.*

De filiis. Item, Gif ane man deceasis, leavand behind him maa dauchters
nor

nor ane, gotten upon ane mother, his heritage suld be divided equally amangst them, in als mony parts or portions, as there are dauchters to succeed: Quhilk forme of succession, is called, *successio in capita, cum scilicet hereditas adeunda, dividitur in tot parte^s Successio quoniam sunt capita, vel persona succedentes.* Bot the eldest daughter, ^{in capita.} suld have the principall messuage, without division, be reason of her dignite and birth-richt, and satisfaction therfore suld be maid to the remenant dauchters, *lib. 2. c. Si autem 31. De Judic. c. Item Nota 115.* Togidder with the superiority of the portions, perteining to all her zounger sisters, to quhom their husbands suld mak homage, acknawledging her to be their superiour, and their aires suld give the relieve of their landz, quhen it fall happen. *Lib. 2. c. Maritus. 32.*

Gif ane man have sindry wives, and of ilk wife ane or maa dauchters: All his dauchters succeedis to him in his heritage equally. *Per De filiis diversarum capita, as gif they were all gotten upon ane mother. Lib. 2. c. porrè uxorum.* contingit 33.

Item. Gif maa dauchters nor ane, are procreat upon sindrie wives, of the quhilk wives, ane is ane heretrix: Swa that the heretage cummis be her, and not be her husband: The dauchter or dauchters gotten upon her, succeedis to her heritage, and excludis all the rest of the dauchters theirfra. *Leg. Forest. c. Si quis habuerit 26. De Jud. c. 24.*

Be the Lawes of the Burrowes, gif ane Burgesse have maa wives nor ane, and bairnes procreat of ilk ane of them: All the landes perteining to him, be reason of heretage or conquest, in the time of his first wife, suld perteine to the bairne gotten with her in the first mariage: And all the landes conquest be him, the time of his second wife, fall perteine to the bairne gotten with her, in the second mariage. *Leg. Burg. c. Si Burgesis, 26.*

Failezieng sonnes and dauchters, quhilks are nearest and lauchfull aires, the richt of succession perteinis to the *Nepuoy or Neipce,* gotten upon the son or the dauchter. *Quia deficiens proximioribus hereditibus, nempe filio, vel filia, vocantur heredes remotores, ut neptium. Nepos vel Neptis ex filio, vel filia, recta linea descendens. Lib. 2. c. Heraldum, 28.*

Gif ony man deceasit, leavand behind him ane Nepuoy or Ne^z puoyes, ane or maa, procreat be his son already deceased. (*Ex filio uno vel pluribus ex filio*) they suld succeed to him in the samin maner, as is

abone said, of the succession of sonnes : That is, gif there be ane *Nepnay* allanerly, hee is onely universall successour : And gif there be maa *Nepnyses*, the eldest allanerly succeedis to all. *Lib. 2. c. Porro 33.*

*De nepote
& filio.*

Gif ony man deceasys, leavand behinde him ane *Nepnay*, begotten be his eldest son, already deceased, and ane second son, quha is father brother to the said *Nepnay* : The second son is excluded from all richt and commodity of succession to his father. Because the *Nepnay* lauchfully gotten be the eldest son, representis the person of his father, and therefore *Iure representationis* succeedis in his fathers richt : and consequently, is onely aire to his gud-schir: like as his father wauld have bene, gif he had not deceased before him. *Lib. 2. c. Porro 33.*

The like is to be understood of ane *Neipce*, or *Neipces*, ane or maa, begotten be the eldest son already deceased, quha suld be preferred to their father brother, anent the succession of their Gudschiirs heritage : Except speciall provision of tailzie be maid in favours of the aires maill : *Quo casu haredes masculi succedunt, non dispositione juris, sed ex provisione hominis.*

Item, Ane *Neipce* or maa, of ane son or dauchter succeedis to their Gud-schir or Gud-dame, in the samin maner as their father or mother suld have done, gif they were zit living. *Lib. 2. c. Porro 33.* And in this case it is to be observed, that quhen maa *Neipces* nor ane, borne of sondry mothers succeedis, that the heritage suld be divided *ratione stirpis*, in as mony parts, as there is stockes, of quhom the saids *Neipces* descendis and proceedis : As for example, gif there be ane *Neipce* begotten upon ane dauchter, and twa *Neipces* begotten upon ane uther dauchter, they all three suld succeed to their Gud-schir; but the heritage suld not be divided in three parts, *ratione capitum*, bot in twa parts allanerly, *ratione stirpium*: That is, of the twa sisters quhilks ar the twa stockes, of quhom the saids *Neipces* descendis : And swa the ane *Neipce*, gotten upon the sister, suld have the ane halse, and the uther twa, the uther halse allanerly of the heritage : Quhilk forme of succession is called *successio in stirpes*, quhen the bairnes being maa in number, succeedis to als meikle allanerly, as wauld have pertained to their mother, gif she had bene living.

*De nepote
una vel plu-
ribus.*

*Succes-
sio in
stirpe.*

De linea obliqua collateralium.

QUEN the succession failzies in the richt line descendent, *De fratre*
as quhen the sonnes and dauchters, and all persons descendand of
them lineally, failzies: Swa that there is nane of then to succeed: *bus.*
Then the brother of him quha is decealed, suld succeed to him.
Lib. 2.c. Deficientibus 24. Ills enim qui ex linea recta descendant, semper preferuntur illis qui ex transversa linea proveniunt, & illis defientibus, hi ad successionem admitti debent, lib. 2.c. Porro 33.

The heretage, and the air-schip of all moveable gudes, perteining to the eldest brother, deceased without lauchfull aires of his *natu maximo* *De fratre*
body, perteinist to the second brother, immediatly nearest to him, *nos.*
Quia hereditas gradatim descendit ad immediatum proximum. Lib. 2.c.

Siergo 23. c. Praterea 25. leg. Burg. c. sciendum 150.

Gif there be three brether german, borne of ane father and ane *De fratre*
mother, and the second brother deceasist without aires, *natu min.*
lauchfully of his body: his elder brother succeedis to him in his *ri.*
lands and immoveable gude: and the yonger or thrid brother is
alluterly excluded therfra. *Quia conquestus gradatim ascendit, lib.*
4. c. Si tres 50. lib. 2. c. Praterea, 25. Bot be the practicque of this
Realme, the air-schip of the moveable gudes, perteining to the se-
cond brother, the time of his decease, descendis and perteinist to
the yonger and thrid brother, as lauchfull aire: To quhom like-
wise perteinist the lauchfull tutory of the said second brothers son,
quhen it fall happen to fall.

Gif there be maa brether nor ane, three, or maa in number, and *De fratre*
the youngest of all happen to decease without lauchfull aires, *natu min.*
gotten of his body, his immediat elder brother succeedis to him as *nos.*
lauchful aire; because conquest ascendis fra ane degree to ane uther,
immediatly to the first degree. *Stat. Ro. 3.c. 3, stat. Wilb. r. not and. 24.*

Falziand the brether, and their aires, gotten of their bodies, the *De sorori*
sister, or sisters, gif there be maa nor ane, succeedis in *Capita*, to *bus.*
their brother, in the samin maner, as the dauchters succeedis to
to their father. *Lib. 2.c. defientibus 34 de Judie. c. Si quis 24.*

Gif the brother deceasist without aires gotten of his body, his *De sorori*
full sister gotten with him be ane father, and of ane mother (quhilk *bus ex di-*
is called *soror germana ex eodem utroque parente*) succeedis to all *versus me-*
tribus.

his heritage, and excludis all uther sisters, gif ony be gotten be his father, upon ane uther wife, quhilk in Latine is called *soror consanguinea*, lib. 4. c. *Si homo* 48.

De sororum liberis.

After the decease of the sisters, theit bairnes succeedis *in stirpes*, in the samain maner, as their mothers mycht have done, keipand alwaies the distinction betwixt the maill and femaill, be the quhilk the sister son excludis the sisters daughter. Lib. 2. c. *Deficientibus 34. de Iudic. c. Si quis 24.* *Quid (ut dictum est) mulier nunquam cum masculo partem capit in hereditate aliqua.*

De patre eiusque liberis.

Failzyng the sisters bairnes, and the aires gotten of their bodies, the father brother (*Avunculus, hoc est, patruus*) And his bairns descendant of him, succeedis. 1. 2. c. *Deficientibus 34. de Iudic. c. Si quis 24.* *lib. 2. c. Deficientibus 34. de Iudic. c. Si quis 24.*

De amita eiusque liberis.

Failzyng the father brother, and the aires lauchfully gotten of his body : The father sister (*Matertera, hoc est, Amita*) and her bairnes suld succeed conforme to the foresaid distinction, betwixt maill and femaill. Lib. 2. c. *Deficientibus 34. de Iudic. c. Si quis 24.* Be the quhilk distinction, the father sister's son, excludis the fathers sister daughter.

De iure accrescendi.

It is to be diligently observed, quhen inaa persons nor ane (sik as mony sisters or Neipces) succeedis, and it happen ony ane of them to decease without aires lauchfully gotten of their awin bodies : the portion and part of the heretage quhilk pertained to the defunct, accrescis to all them that remainis on life, and suld be divided amangis them all. Lib. 2. c. *Maritus, 32. de Iudic. c. Items nota. 115.* *lib. 2. c. ult. 53.*

Last of all, gif ony man gotten and borne in lauchfull mariage, deceasis without ane lauchfull aire, and it cannot bee knawin quha suld succeede to him. Or gif it bee in question or doubt, quha is the richteous aire : Be the auld Law of this Realme, the King, or ony uther Superiour, reteinid the lands in his awin handes, untill the pley was ended, in favours of the just aire : Or untill it was knawin quha was the lauchfull aire. Lib. 2. c. *ult. 53.* Bot now, gif there be na lauchfull aire, to enter to the heritage : the King, as *ultimus heres*, recognoscis, and reteinis the samain as escheit, *ad perpetuam remanentiam*, and may sell and dispone thereupon at his pleasure, as his awin proper lands and heritage, *vide Bustardus.*

*Erectare Essonia ab aliquo facta, to reckon, esteeme, or judge Es-
sonzies*

sonzies or excusacions maid be ony person. *Quon. attach. c. de brevibus 31.*

Effonum, ane Effoinzie or excusacion. lib. 1. c. 10. Iam. 2. 13. Oto. p. 11. c. 53. Iam. 1. p. 9. c. 114. From the French word *Exoine*, quhairof mention is maid in the Lawes of Normandy, lib. 9. c. 10. And be *Molinens in Styl. suprem. eur. parl. 1. c. 6. de contumacia.* And be D. Thom. Smith. lib. 2. v. 14. of the Common-wealth of England.

Estoverium, Iter Camer. c. Si quis captus 25. de Iudic. c. 156.

Sustentation, Nurishment: for the superiour, during the time of the ward, suld susteine the aire honorably, conforme to the quaitie of the heritage. *Lib. 2. v. Plenam 42. Iam. 4. p. 3. c. 25.* Quhill is conforme to the English Law in *Magna Carta*. Quhair it is statute, that the wardar fall give the aire his reasonable Estoverie, *An. 9. Hen. 3. c. 12.* Quhair also it is written, that the relict of ony man, fall have her reasonable estoverie, of the commun guds of her husband that is deceased, untill her dowry be payed to her, *Vid. Quarantena viduarium.*

Evo & Treve, dicuntur natiui de avo & triavo, quorum majores servitutem servierunt: That is, sik slaves or servandes, quhaiis father, gud-schir, grand-schir, and forbeares, hes bene servandes to ony man, and his predecessours. Quon. attach. Cn. de brevibus 31. vid. Bondat.

*Exitus terra, The rents, fruits, and profits of the land. Lib. 1. c. Si quis liberum 24. lib. 3. c. cum antem 6. Quon. attach. c. secus 28. leg. Forest. c. Probate 87. Exitus iustitiae: The profit or commodities of the Justice aire. Iter Iustic. c. 3. 4. Exitus curie, the commodity and profit of the Court, sik as unlawes and summes of money, payed be them quha are amerciat or convict of ony crime, or comes in will therefore, as it is manifest be the forme of the precept, direct be the Chalmerlane to the Schireffe, to take up, and introemet with *exitus cameraria*, or the profits of the Chalmerlaine aire. *Exitus hereditatis, de actorn. c. 1.* Is called the fruits, rents, profits, and emoluments of the heretage, quhilk in the English law is called the issuies of the heritage, *Mag. Cart. An. 51. Hen. 3. c. 17.* And sik like, *Exitus tenementi*, signifies the mailes and dewties thereof. *Quon. attach. c. Secus 29. M. d. ten. car. c. 30.**

Extent of lands, signifies the rents, profits and issuies of the famin, quhairof there are twa kindes, the auld extent, and the new extent;

For it appears that the rentall and valour of lands, hes bin taxed and liquidat to ane certayne summe of silver, conforme to the profits and dewties, quhilk the lands payed at that time; quhilk is calld the auld and first extent, *tempore pacis*. Bot because the revenues and dewties of lands be progresse of time, did increase and grow mair and mair: ane uther taxation & extent was maid in the time of peace, as the former extent, conforme to the profites augmented, as said is, quhilk therefore is called the new or second extent: And properly is the very availe that the land is worth, and givis the day of serving of the brieve. *1.3.p.7.c.55.* To the quhilk, the word *Nunc*, contained in the brieve and retour, suld be referred. For *tempore belli*, or in time of weire, there is na ordinar or certayne extent of lands, prescribed be ony law: For in sikh time either the lands ar wast, and ar not laboured, or the lands-lords servis in proper person: and it is na reason, that they suld baith make personall service, and also pay extent or taxation. The Lords of the Session esteem ane mark land of auld extent, to four mark land of new extent. *21. Mart. 1541.* Quhilk commonly is called, the fourth maill, and suld be generally used in retouring of lands to the Kings Chancellary, and uthers Chappelles: Albeit the famin is not perpetually obserued. This distinction of the auld extent, and new extent, is necessar: For taxation of lands are raised, conforme to the auld extent, and the relieve of lands, is the retoured maill, according to the new extent. And sikh like, quhen the lands are fallen in the superiours hands, be reason of none-entrese, he suld have allanerly, the retoured maill thereof, conforme to the new extent, *vide* *None-entrese*.

F

FALSING of doomes, Reduction of decretes. *vid. Sock.*
FARANDMAN. *De Iudic. c. 47.* Ane stranger or Pilgrymer, to quhom justice suld be done with all expedition, that his peregrination be not stayed or stopped. *Peregrini mercatores, dicuntur Farandman. Lib. 4. c. 39. in lib. Sconens.*

Felonia, signifies not onely the falsoed, or the contumacie of the vassall toward his over-lord, or of the over-lord toward his vassall.

Bot

Bot also all and quhatsumever capitall crime, in Latine, *Scelus*, in Dutch, *Schelmerie*, or ony uther fault or trespass. *Iter camer. c. Si quis captus 25. Stat. Alex. c. 2. c. Ultim. 54.* As to burt or assaile any man, with swerd, either edge or ure. *Iac. 1. p. 6. c. 97.* Or ony lesse or private crisme, as suspition of theft, or quhatsumever fraud, deceate, commonly used in contractes, pactions, and uther conventions, *lib. 3. c. ex causa 8. in fine. Cujus lib. 1. de feud. Writtis* that felony is not only rebellion, bot also perfidie, fraud, or ony kind of fault, *perfidia, fraus, culpa, improbitas.*

Feodium, Fendum, lignifies not (as some affirmis) life-rent, in Latine, *usus fructus*. For he that is saised in the life-rent of lands, is not understand to be saised in feodo, or in the fee thereof; For the ane is different from the uther, *7. Mart. 1561.* The Countesse of *Crawfurd*, contrair the Earle of *Crawfurd*. And sik-like: *Feodium* signifies nocht the superiority of lands: For git ony maried man happenis to decease, vest, and saised in the superiority of lands, his wife suld not have ane terce, or thrid thereof. Bot *Feodium* commonly signifies the heretale fee, and property of ony thimg, and specially of lands, as is commonly contained in the brieves and retoures, *Cum aliquis dicitur obiisse saifissus & vestitus, in terris ut de feodo. lib. 3. c. Cum vero 28. c. sequens 33. Stat. Rob. 3. c. 1.* Of the quhilk lands, the just thrid, and reasonable terce, will perteine to the wife, fra the time of her husbands decease, induring her lifetime, *vid. Quarantena viduar. Dominus feodi or fendi*, is called the Lord of the ground or land, *lib. 2. c. Usurarii 53.* quhair *feodium & hereditas*, ar baith ane. *Et hereditas damnati propter crimen, dicitur pertinere ad dominum feodi, tanquam escheta.* Item, *si quis condemnatus fuerit de furto, res eius mobiles, & caralla solent vicecomiti remanere: Terram autem si quam habuerit, dominus feudi habebit, lib. 2. c. Foris factum 55.* He is called utherwise, *Dominus fundi*, *lib. 2. c. Defuncto 69.* *Et fendum idem est quod fundus, lib. 2. c. Marina 68.* And *Alio fendi*, is ane action or pley of landes or heritage, *lib. 1. c. 2.* *Feodium militare*, signifies lands halden be service of ward and relieve: *lib. 3. c. Maritatum 56.* *Feodium laicale*, Is landes pertaining to Laicks and Temporall men, *lib. 2. c. 59.* As *feodium Ecclesiasticum*, signifies lands pertaining to the Kirk, or Kirk-men, *lib. 3. c. sequitur 31.* *Cum seq. Swa be the laws of this Realm, al guds and geare ar moveable, and called *Caralla*: Or immoveable, and ar called *feodium, hereditas, terra, fundus, tenementum*. Fee or property,*

in Latine, *dominium*, cannot perteine to maa persons hor aue. *Quia dominium unius rei uno eodemque tempore non potest esse in solidum penes plures.* And therefore, gif twa or maa persons happenis to be infest, conjunctly in ony lands, the property perteinis to him in quhais aires and successours, the infestment resolvis. As for example, The husband and the wife are infest in certaine lands, the langeft liver of them twa, and the aires gotten, or to be gotten betwixt them, quhilk failzyng his aires: In this case the husband is proprietar, and the wife is conjunct fear, or life-rentar. Bot gif it besaid (quhilks failzyng to her aires.) In that case the wife is proprietar, and the husband is conjunct-fear, or life-rentar.

Feeodium, is taken for the fee, wage, or stipend, given to ane ser-
vant for his service, as in the Lawes of King *Mal. Mak.* c. 4. *de feod. offic. dom. reg.* Quhilk utherwaines is called *liberatio*, ane live-
ry, *vid. Liberatio.* Quhair anent the Lords of secreit Council and
Checker, maid thir ordinances, as follows.

At Edinburgh the thrid of June, 1597.

Prices of
the Seales.

FOr sameikle as the Lords of his Majesties secreit Council and Checker, according to the speciall power and commission, gi-
ven to them be his Hienesse and his estaites, quhilks conveeneat at
Dundie, in the Moneth of *Maii* last by-past: Hes thought meete
and convenient to set down the prices of his Majesties signet, privy
and great Seales, of all infestments, and uther signatures, quhilk or-
dinarly sild passe throw them: And of the Chalmer fees, quhilks
fall be receeved hereafter, fra his Hienesse lieges, in maner follow-
ing: That is to say, That the Signet, according to the auncient
custome, fall be the rule to the privie and great Seales, in all infest-
ments, and uthers signatures, quhilks ordinarily sild passe throw
the hale three. And that the privie Seale, fall receive na mair, nor
the double of the price, set downe hereafter: for the Signet, nor
the great Seale, mair nor the quadruple of the said Signets price,
under the paine of deprivation of the contraveeners, fra the Office
and Seale, quhilk he possells.

Prices

Prices set downe to the Signet, for letters and others written,
quhilke passis throwna uther scale:

F irst, of all sorts of summonds of quhat sumever qualtie.	vij
	shillings, viij pennies.
For letters conteining baith inhibition, and arrestment.	xij shill.
	viij pen.
For letters of law-borrowes, and uther criminall letters, how mo- ny persons soever be insert	vij shil. viij pen.
For Ministers letters certly rayfed	vij shil. viij pen.
For all letters of horning of quhatsumever quality, except letters of Law-bortowes, and criminal letters	xxij shil. viij pen.
For ane relaxation	vij shil. viij pen.
And gif maa nor ane be insert, the like price of every person to be relaxed, or composition for them, at the discretion of the kei- per of the Signet.	

Prices set downe to the Signet, for signatours passing the
Privie and great Scale.

F or ane Legitimation	vij shillings viij pennies.
For signatours of infestments of lands, within five mark land of auld extent	vij shil. viij pen.
For ane resission to ane person onely	vij shil. viij pen.
And gif it be to maa nor ane, als mony halfe markes, as they are persons, or composition therefore, at the discretion of the keiper of the Signet.	
For ane infestment of ane five mark land of auld extent,	xij
	shil. iiiij pen.
And for sa mony maa marke lands, as the signatour conteiniis proportionally: Providing that quhat ever be the extent of the lands, the samyn not being styled ane Barronnie in the infestment, the highest price for the Signet, shall not exceed	1. shilling.
For ane or maa Barronies or land conteined in the signatour, quhilke are not unite in ane Earledome nor Lordship, for the haill signatour	iiij punds
For halfe ane Barronnie, swa styled in the signatour	xxx shill.
For ane Earledome, or ane Lord-schip of dignitie, having vote in	

in Parliament, including never so many Barronnies vj punds.

For ane comprising, quhilk exceedis not ane thousand markes, vj shil. viij pen.

And gif the same exceed that sum, to pay proportionally, providing that the heichest price exceed not l. shil.

For ane Bishoprick, Abbacie, or Priory, exceeding ane thousand punds of yearly rent to the possessor vj punds.

Being within ane thousand punds l. shillings.

Reservati-
ons. Nothing to be tane for reservations of life-rents, contained in the signatoures: In respect the reservation is na new benefit to the receiver, except quhair the resigner is a bastard. In the quhilk case, respecting his Majesties prejudice be the resignation: quha uther-waies might succeed to the lands resigned, be the prent posses-
sours decease, without lauchfull aires: sikk reservations fall pay ac-
cording to the prices before set downe for the lands resigned,
comptand alwais, the man and wife to be ane person.

Tailzies. Nothing to be tane hereafter for ony tailzies, except the foresaid price, according to the quantity of the lands resigned, in respect the feare may alter his tailzie at his pleasure, except quhair the Fear that resignes the lands is Bastarde. In quhilk case, the like price may be tane for every person contained in the tailzie, as is set downe for the quantity of the land resigned.

Benefices. For infestments conteining patronages of Benefices never be-
fore disponed, nor annexed to the lands of new infestments of her-
itable offices. The land is to pay according to the quantitie and
rate, before set downe, and the patronage, gif it be of ane onely
benefice, the ane halfe of the duety of the lands. Gif they be ma-
to pay the said haill price of the lands for the saidis patronages.
Quhilk price, the keeper of the signet fall not exceed. Sikk-like for
new and heritable offices.

Offices. Prices set down to his Elenesse priuie Seale, to be tane hereafter, of sikk
giftis and uther signatoures quhilk passis be said Seale allanerly.

FOr escheits of zeemen, and uther meane persons xx. shil.

For escheits of landed Gentlemen and substantious Burgeses, xxx. shilling.

For escheits of Baronnes xl. shil.

For escheits of Earles and Lords iij punds.

For

For their life-rents, <i>respectiue</i> — — — — —	dowble price.
For presentations to Vicarages	xx. shillings.
For presentations to Parsonages	l. shillings.
For respects to zeamen men, and uther meane persons	xxx. shil.
For respects to landed Gentlemen, and substantious Burgeffes	xl.
	shillings.
For respects to Barronnes	iij punds.
For respects to Earles and Lords	v. punds.
And gif there be maa persons contained in the signature, to pay <i>per capita</i> , according to their ranks.	
For the wards and mariages, non-entreesses and relieves of landed men, under Barrohes, included in ane signatour	iij punds.
For the wards, mariages, non-entreesses and relieves of Barronnes,	vj. punds.
For the like of Earles and Lords	x. punds.
For the ward allane of Gentlemen	xxx. shil.
Of Barronnes	iij punds.
Of Earles and Lords	v. punds.
For the mariage allane of simple Gentlemen	xxx. shil.
Of Barronnes	iij punds.
Of Earles and Lords	v. punds.
For the non-entreesse allane of meane landed men	xx. shil.
Of Barronnes	xi. shil.
Of Earles and Lords	iij punds.
For giftes of Prebendaries or Chaplanaries	xxx. shil.
For Tutorials	xxx. shil.
For the multitude of denuntiations included in ane signatour of escheit, or life-rent, na payment, but for the gift onely: In spec they can import but ane gift of escheit allanerly.	
For presentations to Prelacies, legitimations, signatours of in- festments of Barronnes, and uther lands, remissions, and sik uther writs, as passis first the Signet: The keeper of the privie Seale, shall take for them allanerly, the double of the prize, quibilk ilke ane of them payed to the Signet.	
In tailzies, reservations, patronages, heritable offices, erections in free Burrowes, and sik like, to take payment, according to the order and proportion of the Signet.	

Agent the Chalmer-fee.

IT is ordained, that na signatours hereafter, fall pay Chalmer-fee, except resignations, and confirmations, irredeemable ala-nerly: and of sik lands as are neither of his Majesties propertie, nor temporalitie anoxed, quhilks are declared to be free of all sik fees in time cumming.

Prices set downe to the great Seale.

THAT the keeper of the great Seale, exceed not the quadruple of the Signet, or double of the privie Seale, under the foresaid paine. That to this effect the keiper of the Signet, fall upon the back-side of the prent of the Signet, set downe the price quhilke he receives for every precept, and for all uther letters after his name. Likewaies the keiper of the privie Seale, his price for preceps, and uther letters after *per signaturam*: that thereby the keiper of the great Seale, pretend na occasion of ignorance. Sik-like, that the said keiper of the great Seale, set downe his price in the fore face of every tag, quhairunto the said Seale fall be appended: And that thereafter their be na drink-silver exacted fra the partie, uther nor he will be content to give at his pleasure and discretion. And ordains ab Herald, Maiſſer, or uther officiar of armes, to passe to the Mercat-Croce of the said Burgh of Edinburgh, and therbe open proclamation make publication, and intimation of the premisses, to all and sindrie his Hieselfe lieges, quhair-thow bane pretend ignorance theirof. As alſwa to command and charge the keipers of the Signet, privie, and great Seales, Ischers of his Hieselfe Chalmer, and all uther quhom it effectis, to conforme themselves to the will and direction of the said Commissioners, signified to them in maner foresaid: and on nawaies take upon hand to altar or contraveene the same in ony point hereafter, as they and like ane of them will aunswer to his Majestie, upon their obedience, at their uttermost charge and perill, and under the paine of deprivacion of them fra their offices, certifying them and they failzie, That they fall be deprived fra their said offices, and utherwaies punished in their persons as effectis.

Apud

Apud Edinburgh quarto Junii, Anno 1597.

THe Lords of secreit Councell and Checker, following the commission given to them by his Hienesse and his Estaites, lately conveened at Dundie, anent the ordour, taking with the exorbitant prices of all sorts of writtes and letters, usuall amang the lieges, and likewaies of the Seales, Registers and Chalmer-fee, quhilk a great number of the same mon passe, procuring daily baith private grudges and publick exclamations, against the tolerance and with-gang, given to sic shamefull extortioun and abuse, highly to his Majesties dishonour and offence, and to the manifest undoing of the puer anis of this Realme, constrained to have adoe with the saids writs : Have for remeid of that abuse, decreted and ordained in time comming, and quhil a mair particular and folide ordour may be taken theirin, That all and quhatsoever Clerkes of Session, Justice, secreit Councell and Checker, Clerkes to quhatsoeuer Commissioner, Admiralle, Schireffes, Stewards, Baillies of regality and roialty ; Provests and Baillies of quhatsumever his Hienesse burrowes, and of all uther Courts or Judgements within this Realme, all waivers to the Signer, privie and great Seales ; all keppers of quhatsoeuer roller, Registers and Records, all publick Notars, and uthers writers quhatsoeuer, quha fall hereafter register and jo-roll, forme, extract, writ, or give out for payment, to ony of his Hienesse lieges, ony signatour, contract, obligation, decret, act or ordinance of ane Court or Judgement, chartour, faising, or uthere evident, billes, letters or uthere writs quhatsumever of ony importance to the receiver : Shall subscribe with their hands the said writ, and subjoyn to their names, the just and ordinar price, quhilk they receive fra the partie for their paines. To be a testimony of their discretion, in valuing of their travellies taken in the saides realties, and to give further licht to the saidis Lordes, quhat constant prices they may set upon the like in time to come, under the paine of deprivation from their offices, and punishment of their persons at his Hienesse further pleasure, in caise of failzie. And ordainis letters to be direct. To make publication of the premissis to all and syndry his Hienesse lieges, quhair throw nane pretend ignorance thereof.

Fercoft, ane Italian word : Ane kinde of Schip or little Boate.

In ane priviledge granted to the Burgh of *Dundie*, for reparation and bigging of their Port and Haven, be King *James* the second, in the zeir of God, 1458, and of his raigne, 22. Mention is maid of ane *Fercoft*, quhilk is inferior in birth and quantity to ane *Schip*, because the impost and taxation laid upon ilke *Schip* is ten schillings, and upon the *Fercoft*, twelve pennies, and of every *Crear*, bulch, barge, and ballinger, five schilling, and ilke great boat sex pennies.

Ferdingmannus, ane Dutch word, ane penny-maister, or *Thesaurar*. *Stat. gild. c. 5.*

Fidelity, maid to superiour, and over-lord, *vid. Homagium*.

Finis, finance or composition maid with thieves. *Stat. 2. Rob. Bruyse. Item 9.*

In the quhilke place it is called *rachetum*, or thief-boat. *Finis curie*, ane composition quhilke ony man gives in ane Court, sik as the justice airo to the King, *In registro 28. December, 1541.* The *Thesaurar* contrair the Burgh of *Pert*. *Finem facere cum rege*: to fine with the King, or to make ane finance, and satisfie him for ony trespass committed against him or his Lawes. *Ass. reg. David. c. 9. lib. 4. c. 3. c. 5. vir. 16.* or *finem reddere regi*, to pay ane fine or composition to the King for ane crime, sik as thief-boat. *Stat. 2. Rob. Bruyse. item ordinat. 9.* *Finem facere cum molendinario de multura*, To agree and compone with the Miller for the multer. *Stat. Wilhelmi. cap. Item statuit quod detentor. 11.*

Firmarius, ane mail-payer, ane mailer, or mail man. *Leg. Burg. c. 5. si firmarius 56. Quon. attach. c. nullus 26.* *Firma* signifies the duty quhilke the tennent payis to the landis-lord, quhidder it be filver-maill, victuall, or uther duty. *In stat. gild. c. 48.* In the quhilke signification, it is commonly used in the *French Lawes*.

Forensis, from the French word *Foraine*: In the Burrow lawes of this Realme, signifieth ane un-free-man, quha dwellis not within Burgh or out-dwelland-man. And therfore is called *Rure manens*, quha dwelland aland-ward, hes na priviledge, or imnunity within Burgh. Commonly all strangers are called *Forinseci*, or *Foreines*; uther waies *advena*. Quhair anent it is statute, that na Burges dwelland in Burgh, sall harboury ony strange man in his houise, langer nor ane night, without Borrowes and caution. *Leg. Burg. cap. Nullus in Burgo 88. Quon. attach. cap. nulli 47. Servitium forinsecum*, signifies sik service as the vassall or tennent, fuld doe to his over-lord and maister, fra hame, or in time of weir-fare. In Eng-land

land they quha are not borne Englissh-men, are called Alienens: Quha injoyes not libertie within the Realme, except they be *Denezed*, quhilk word appeares to be driven a *Danis*, quasi *danisatus*, that is maid lauchfull and free, as ony *Dares man*, quhen the *Danes* did occupie and possesse a ne great part of that Realme: Oe it may come fra the *French* word *Denier*, that is to deny. Because sic persons as are denysed in England, denyis and renouncis their awin native Cuatrie, and becummis English-men, as naturally borne English-men.

In France they are called *Ambani*, or *Albini*, quasi *alibi nati*, strangers not borne within the Realme of France, quha therfore deceasand in France, without lauchfull successioun of their bodies, hes na power to make testament. For their gudes and geare, are nocht given to their aires, or successours, bot are confiscat to the Kings use, be the law quhilk is named, *Albinage, jus albinagii. Chesa. in consuetud. Burgund. Rubric. 21. s. 3. verb. dies compensationis. Nu. 37.* In the Actes of Parliament, *Mary*, p. 8. cap. 66. it is cal- led *droit d' Aubeyn*.

Forestarius, ane Forester, or keeper of woods, to quhom be rea- son of his office, perteinis the bark and the hewen branches. And quhen he rides throw the forest, he may take a ne tree als heich as his awin head, *leg. Forst. c. 10. Foresta*, is called a ne large wood, without dike or clasure, quhilk hes na water. *Sylva* is a ne wood neare adjacent to a ne flude of water: bot quhen the samain is inclo- sed with dike or hedgings, is called a ne Parke, *Chessa. in consuetud. Burgund. Tit. des forest. 13. in prim. per gl. in c. cum dilecti. de do- nationibus. Felin. in c. Rodolphus, extr. descript. Nu. 21. Q*hair fore- stis is called a place, quhairin are included wild beasts, and quhair sum hes liberty of hunting. Bot quhair there is a ne flude of water, it is *Sylva*. And beand circled about, and environed with waters *Insul*: And inclosed with dikes or hedgings *parcus. Io. Andr. in d.c. dilecti. Infestatus in liberam forestam*, infest in free forest, hes power to hunt, halke, and cut trees, quhilk we call *forestatem venandi, an- cupandi, & secandi*, quhilk liberty na person may use bot be speci- all licence granted to him, *vid. Varenna. vid. Venison. vid. Werd.*

Foris-factum, ane unlaw, quhilk utherwaies is called *americian- mentum*, *I. c. dos autē 19. stat. Alex. c. si quis conquisitum 9. l. 4. c. 3. leg. Burg. c. foris-factum 42. vid. Americianum.* It is taken for forni- cation committed be a ne woman being airc femaill within waird,

ut cum feminis dicitur forisfaere de corpore suo, to fore-fair, or abuse her body, vid. *Putagium*. Item, it signifies what sumever fault, trespass and crime, and is called fore-fault in the Acts of Parliament. *Jam. 2. Parl. 3.c. 6.* And quhair it is written, *pro uno foris-facto non debet esse nisi unum amerciamentum*. *Leg. Burg. cap. de uno 3.* In ane uther place it is said, *Pro uno delicto, non debet esse nisi una misericordia*. *Affid. Reg. David. cap. ad hoc 28.* That is, for ane fault there shuld be bot ane un-law. And in the English Lawes, *Henri. 3. In carta de foresta cap. 15.* all Out-lawes for the Kingis Forresters, shall returne to his peace, and shall finde to him sure pledges, that they shall nocht doe ony fore-fault, or wrang in his Forresters. *Foris factum plenarium regis*, may be extended to the death, as *plenaria iustitia*, quhilk shuld bee execute upon him quha stops the sleuth-hound, in persewring of thieves and thief. *Lib. 4. cap. & si quis 35.* And it is statute that name shall stop the Kingis Burgesses to buy and sell, and freely throw-out all the parts of the Realme, *Super plenarium foris-factum regis, leg. Burg. c. si burgenses, 141. vel super plenarium foris-factum regis, Lib. 4.c. Statutum 38 Stat. Willm. cap. Item statuit 19.* conforme to the quhilk constitution, he quha troubles or molestis Merchandes dwelling within Burgh, to use their freedome and priviledges: may be accused as ane oppressor of the Kings lieges, *Jam. 5.p.4.c. 26.*

Foris-familiari, Foris-familiat, put furth of his fathers house, or maid free, and delivered forth of his fatherly power, the sonne is called *foris-familiat* be the father, quhen he with his owin consent and gud will, receivis from his father onely lands: and is put in possession theirof, before his fathers decease, *Lib. 2.c. porrò 33.* and is content and satisfied therewith. Swa that he nor his aires may not claime or crave ony mair of his fathers heritage. *De judicibus cap. Item nota, 115.*

Forestallers, vid. Registrars.

Fortalitium, Jam. 2.p.3. c.3. Stat. 2. Rob. Br. c. Item ordinatum 8. Ane fortalice, ane Castell, and properly ane house or towre quhilk hes ane battlement, ane barmekin, or ane fowfie about it. *7. Febr. 1596. Lord Fleming contrair James Ross.*

Forthoche-fellony, praecipitata malitia, quhilk is done and committed wictingly and willingly, after deliberation and set purpose, and is different from *chandmelle*, *quia ut scribit Cicero. l. 1. offic. In omni iniquitate, permulcium interest ntrum perturbatione aliqua animi,*

qua

qua plerumque brevis est, & ad tempus, an consulto fiat injuria. Leviora enim sunt ea, qua repente aliquo motu accident, quam ea que meditata & preparata inferuntur.

Fossa, ane pit or fowfie. Furca, ane gallous, in Latine Cabalum, quihilk was first institute and granted be King *Malcolme*, quha gave power to the Barrons to have ane pit, quhairin weemen condemned for theft fuld be drowned, and ane gallous quhair-upon men thieves and trespassours fuld be hanged, conforme to the doome given in the Barron Court there-anent. *Hector Boëtius*, lib. 12. *Excellio furcarum est meri imperii, & alte iustitia, & significat dominium aeris, quia suspensi pendent in aere.* Et merum imperium consistit in quatuor, sicut sunt quatuor elementa. *In aere, ut hi quis suspenduntur. In igne, quando quis comburitur propter maleficium. In aqua, quando quis ponitur in culo & in mare proicitur, ut parricida, vel in amnum immergitur, ut fœmina furti damnata. In terra cum quis decapitatur & in terram prostermitur. Chess. in consuetud. Burgund. Rubric. 1. sect. 1. verb. au territorie. Nu. 14. & Rubric. 1. sect. 2. Nu. 2. Porro iurisdictio dicitur notio, qua iuri magistratus competit. *Mistum imperium, est potestas qua iurisdictioni inest. Merum autem imperium est jus gladii, vel alicujus gravioris coercitionis nominatum lege concessum. Cuija. lib. 4. de feud. iii. 19.**

Fri: borgb, liber: plegius, vel fideiussor, quem Galli francum plegium vocant. In the aulde Britton Lawes, *Bopher vel Bores*, is that quihilk we call Borrowes, borth, or cautioner. And *Alredus* King of England, divided England in *sarapias, centurias, & decurias* as fall be declared in the word *Schiref*: and ordained that *decuria*, fuld comprehend ten persons, and *centuria* fuld conteine ane hundredth persons, quhairof ilk ane was cautioner and soverie for uthers: in sik sort, that the baill number, and ilk ane of them was answerable for the fault and deed of ony ane of them, and swa was called *Free-borgb, Free-pledge, or cautioner*, *vide antiquas leges Brittonum*.

Furche, ane word, quhairof I finde na mention in the written lawes of this Realme, nor of ony uther Cuntrie: And zit is used in the forme and order of the Chancellary, from *furca*, ane forke. For quhen ony person is served and retoured narrest and lauchfull aire to ony of his Predecessours, of ony landes halden in chiese, of ony uther superior then the King: The directour of the Chancellary, causis his Clerkes direct to the said Superior three

precepts, commanding him to give saising to the person retoured, of all and sondrie the lands, conteined in the retour, he doing therefore to his superior, all quhilk he aucht to do of the Law. Of the quhilk precepts, the second is called *Meminimus a forma verborum qua praeceptum concipitur*. For the precept bear is that the King remembers, that he directed his first precept and command, quhilk was not obeyed, quhairof he mervallis : And therefore zit as of before commandis the superior to give saising. The thrid precept is called *Furche*, for quhat cause I knaw not certainly : Bot like as ane forke hes twa graine, this precept hes ane alternative command of twa parts, for the King commandis the superior to give saising, or else he certifies him he will command the Schireffe to give the samin. *Itaque hoc praeceptum est furcatum, vel bifurcatum, in eadem significatione, qua barba bifurcata, quhilk is divided in twa taits or parts.* And in French *Furche*, is called cloven futed, or forked.

G

G A L N E S, *Lib. 4. c. si quis 37. statuit 66.* Ane kinde of mendis, satisfaction or satisfaction for slauchter. Of the quhilk word I finde na mention in ony uther place, or law of uther cuntries.

Gangiatores, Iter camer. c. Gangiatores 14. signifies them quha suld marke the claih, bread, or barrels before they be suld, with the mark of their Office : or tryis or examinatis all measures and weichts, baith dry and weete : For the French *Jage*, is that quhilk we call Jug, met or measure.

Garba sagittarum, ane scheif of arrowes, conteining twentie foure, utherwais called *schaffa sagittarum*. *Stat. 2. Rob. Br. c. ordinatum est 27.*

Garcifer, ane French word. Ane *Garson*, ane servand quha servis in the Myln, ane myln knave, *Leg. Burg. c. quicunque 64.*

Gilda, ane societie and company of Merchandes. For in the auld Britton Lawes, *gilder* signifies the ordour or societie of religious men, or of crafts-men. *Vide antiquas leges Britonum, verbo Contubernales.*

Girtholt, *Girth*, sanctuary, in Latine, *Asylum, ass. reg. Da. c. si quis*

qnis in aliquo 27. Asylum is driven from the Greeke, *z.*, *particula privativa, & evanescere, b. c. traho, gl. in l. si qnis 17. de adiit. edict.* Because it is not leasum to draw furth ony person furth of the *Gyrth*. Quhair anent sindrie acts of Parliament ar maid, conforme to the Law of God, *Exod. 21. 13. Joshua 22. 1. &c.*

Gleba, ane gleibe, given and granted to Kirk-men and Ministers of the Evangel. *vid. Mansus.*

Guerra, *Lib. 2. c. sunt quidam 72. stat. 1. Rob. Br. c. 17. stat. 2. Rob. Br. c. ordinatum est 27.* Ultherwaines called *Verra*, *battell*, *weir*. And signifies not onely publick weir and hostility, quhilk is proclaimed and denunced be the lauchfull authority of the Prince: Bot also private deadly feed, quhen ony particular person wauld revenge ony private injury done to him. For it is statute be King David the second, *Quod nullus de cetero moveat guerram contra vicinos suos quoscunque, sub pena plenaria foris factura*, 6. November, 1357. Mention is maid of *Courtes of Guerra*. *Jam. 3. Parlian. 8. cap. 69.* quhilkis were halden be Schireffes, Stewards, Baillies, and uther Officiars. Bot quhat was the speciall jurisdiction belangand theirto I knaw nocht: And findis na mention theirofin ony uther part of the Lawes of this Realme, alwaies as it appearis that they were halden by the ordinar Judges foresaides, anent strife, debates, crimes, and trespasses committed betuixt familiar and domestick persons, subject to ane maister, within the jurisdiction of the saides Judges, conforme to the Lawes of the fewes, *in scel. ult. de pace tenend. lib. 2. de feud.* *Si ministeriales alicuius domini inter se Guerram habuerint; comes siue iudex, in cuius regimine eam fecerint, per leges & iudicia, ex ratione prosecutur.* Quhilk forme of Courts being particular Justice-courts, was prejudicall to the jurisdiction of the Justice and his deputes, and grievous to the lieges of this Realme, and theirfore are discharged be King James the thrid, in the place foresaid.

Gysarum, ane hand-axe. *Leg. Forest. c. sciendum est 67.* Quhair it is statute and ordained, that all men of the age betuixt sixty and sexteene, fall have armour, conforme to the quantity and the valour of their lands and moveable guds: that is, he quha hes fifteene pund land, or fourty markes in moveables, fall have ane horse, ane habergeon, ane bonnet of Iron, ane sword, ane dagger. And he quha hes fourty schilling land, or abone, within ane hundredth schilling land, fall have ane bow, arrowes, dagger and knife. And

he quha hes leſſe then fourty ſhilling land, ſhall have *Gyſarum*, quhilk is called ane hand-axe, ane bow, and arrows. And all others, quha fuld, or may have armour, ſhall have ane bow and arrowes.

H

HAIM SUKEN, Lib. 4.c. raptus, 9. in fine, Quon. attach.c. de ca-
tero. 48. stat. Wilb.c. Item stat. 9. Ane Dutch word: For Haim
ſignifies ane house or habitation, quhair ane dwellis, and quhair he
hes his winning, riſing and lying. As we ſay, ane man is at hame,
or not at hame. In the quhilk signification *Cunningham*, is called
the Kings house or hame, ſpecially quhen the Kings of this Realm,
quha of before did dwell in the Iles, came to the maine land to
dwell and remaine in *Doundonald*, and uther places. *Suchen* in the
Germane tongue, ſignifies to ſeek or ſearch, perſew or follow, as
quhen ane gives up kindneſſe to ane uther, he ſay is, *Harr, hart, Ich-*
wol euch ſuchen, ſwa hame-ſuchen, or hame-ſuken, is quhen ony per-
ſon violently without licence, and contrair the Kings peace, enters
within ane mans house, or leikes him at the ſame, or affaileſſes his
house (as is written in the beſt buikes) quhilk crime is puniſhed, as
ravishing of weemen. Quon. attach.c. ſi quis aliquem 50. stat. Wilb.c.
Item stat. 10. quhilk is eſteemed ane great crime contrair the Com-
mon-weil, quietneſſe, and peace of the cuntry, *quia unicuique domus*
ſua eſt tuuifſimum refugium: ideoq; *de domo ſua nemo debet extrahibil;*
ſed & ſi. 21. ff. ſi quis in ius vocat, quod verum eſſe in cauſa civili, non
autem in criminali, notatur in gl. ibidem, quid ſit domus. vid. l. 1. ff. de
agnoscend. liber.

Hawbert, there is four maner of halding of lands out-with Burgh.
Sum lands are halden be the Kirke, *Nomine pura eleemosyna*, and
payis nothing bot *devota animarum suffragia*, as was used in the
time of blindneſſe and Papistry: uther are halden in few, or few-
ferme of the King, Kirke, Barrones or uthers, quhilks payes ane
certayne dewty called *feudifirma*, few-ferme: Uther are halden
blanch, be payment of ane penny, ane rose, ane paire of guilt ſpurs,
or ſum uther dewty quhen it is asked, in name of blench, or *nomine*
alba-firma: uther lands are halden be ſervice of ward and relieve,
and the aire heirof beand *minor*, is in the gairde, that is, waird,
cufodie, and keiping of his ſuperiour, with all his faides landes,
untill

De quatuor
modis re-
nendi ter-
ras.

untill he be *Major*, and of perfite age. And sik-like, his mariage beand *Major* or *Minor*, and not maried before the decease of his predecessor perteinis to his superior, *vid. Varda.* Lands halden in this last forme and maner, are called *feodum de Hauberk*, or *Haubert*, or *feodum militare*, *de maritag. c. diversa. 7. ass. reg. David. c. statutum fuit. 32.* Or *feodum Hauberticum*, or *feodum loricatum*: Because it is given upon condition, that the vassall possessour thereof, fall cum to the hoist and armie, with *Iak* and armes: For *lorica* *Lorica.* *à loro*, signifies ane abuizlement maid of cords. And *Haubert*, signifies ane kinde of armour, maid of mailzies, or circles like ringes called ane *Haubergion*, conforme to the common proverb, many *Haubert*. Mailzies makis ane *Haubergion*; mony littles makis ane meikle. Of *gion*. the maner of tenures in the English Lawes, reade *Littleton*; and in the *Normand Law*, *lib. 5. c. 3. cum seqq.*

Haimbaldarf, *vidicare*, *actione reali repetrere*, to repeat and seeke restitution of proper guds and geare, and bring the famin hame againe. *Quon. attach. c. 4.* as lauchfull and *haimbald* cattell, *mod. tex. cur. c. 13.* and *Hansbald* lint, or *Haimbald* hempe, is that quihilk growis at haimne, within this Realme, and is opponed to lint and hemp quihilk is broeht furth of uther cuntries: *Hamhaldario catalorum*, is quhen ony man seekis restitution to be maid to him of his awin guds and geare, wrangeously taken fra him, quhairof frequent mention is maid in the auld Lawes of this Realme. And he quha seikis the said restitution, suld sweare in this manner: Ane buike beand put within the Hornes, or upon the fore-head of the beast, that is claimed, before twa lauchfull witnesse, that the said cattell acclaimed be him did wander away from him, and that the famin was nocht given, fauld, or ony manner of way annalyed be him to ony kinde of person. *Vid. Cattalla.*

Hara porcorum. Vid. Creffera.

Hebdomas from *swa* quihilk signifies sevin. As *septimana* from *Septem.* For like as be the division maid be *Julius Cesar*, The zeire conteinis twelve monethes, and the moneth fourre oulkes: Swa the oulke comprehends seven dayes, conforme to the number of the seven Planets: to the quihilk the famin are consecrat and dedicate, according to the superstition of the Gentiles, quha worshipped the Planettes as Gods. Bot the Gotthis, and Germans consecrated the dayes of the oulke, to their Idols, uthers than the Planets. Swa the names and appellations of the dayes

of the oulk (used in our language) are taken from the Dutch, and Gotthicke tongues.

For like as oulk, or weik in Dutch is called *Woch* : Swa the day in Dutch is called *Tag*. And the first day of the weik is Sunday, in Dutch *Sontag*, consecrat to the Planet of the Sun : In Latine, *dies Solis*, quhilk utherwise is called, *Dies Domini*, *Dies Dominica* : In the Revelation of Saint John, 1. 10. And is the first day of the seven, or of the weik, As is manifest in the Acts of the Apostles, 20. 7. 1 Cor. 16. 2. Because the samin day our Saviour and Lord Jesu Christ did rise from deid to life, *Ioh. 20. 19*. And therefore like as the Jewes observis the Saterday as their Sabbath : Swa we Christians keipis and observis this day as haly day ; and swa it is called, *prima dies Sabbathi*, The first day after the Sabbath of the Jewes.

The second day is Moneday, and corruptly, Mononday, In Dutch *Mortag*, so called to the honour of the Moone.

The thrid day, Twisday, in Dutch, *Dienstag*, *Tentonis dies*, quhilk is haly, and superstitiously consecrat to the Idoll *Tenton*, quhom the Germanes worshipped as God, and therefore are called, *Tentones*, *Tentonici*, in Latine be the Romans, it is called *Dies Martis*, in honour of the Planet *Mars*.

Olaus Magnus de gentibus septentrionalibus, l. 2. c. 3. And *Albertus Krantzius Suecia*, lib. 41. c. 1. writhis that the auld *Gotthis*, being Paganis, and ignorant of the true God, did honour and worship their principall and chiefe gods or Idols. The first is *Thor*, quha as *Jupiter* had power of the aire, thonder, windes, cloudes, fair and fowle wether, pestilence, and of all fruits : Quhais Image was placed in ane Chyre, upon ane Cusching, the time of the adoration and worshipping of him: Upon his richt hand was set the secund Idoll *Odben*, God of peace, weir, and battell. Of the like power was *Mars*, amangst the Romaines. Upon the ker and wrang side, was placed the thrid Idole, *Frigga*, the gods of pleasure of the boodie and lustes of the flesh, as *Venus* amongst the Gentiles and the Romaines. To thir three Idols of the *Gotthis* three dayes of the weik are haly, and consecrat dayes be them. And therefore the fourth day of the weik, instituted and ordained by *Julius Caesar*, is called be him, *Dies Mercurii*, in honour of the Planet *Mercurius*. Be the *Gotthis* *Odenstag*. Frathe quhilk is called *Odenisday*, or *Wednesday*.

The fist day in Latine, *Dies Iovis*, amangst the *Gotthis*, *Thorstag*.

stag. For *Jupiter* amongst the Romaines: and *Thor* amongst the *Gotthis* was of like preheminence and power. Quhilk day wee call Thursday.

The sext day in Latine, be the Romaines, is *dies Veneris*, in honour of *Venus*, gods of the Romaines, and *Frigga*, gods of the *Gotthis*, baith of the like power and dignitie, quhilke day we call Frygday or Fryday.

The seventh and last day of the weike, is consecrat to the Planet *Saturnus*, and is ealled Sater-day, or Satur-day, *Dies Saturni, vel Saturno sacra.*

Herrezelda, is the best aucht, oxe, kowe, or uther beast quhilke ane husband-man possesseour of the aucht part of ane dauach of land, four oxen gang, dweland and deceasand theirupon, hes in his possession, the time of his decease, quhilke aucht and suld be givene to his Landis-lord, or maister of the said land. *Lib. 4. c. 5 quis 22. ass. Reg. D. a. c. 5 quis 41.* for *Herr* in Dutch, in Latine *Herus, Dominus*, signifies ane Lord or maister, and *zild*, is called ane gift, tribute, or taxation, as in the auld Actes of Parliament maid be King *James* the First, it is written, that ane *zeilde* was gaddered for the rellefe of him out of England. And ane urther *zeilde* was collected for resistynge the rebelles in the North. Swa *Herrezelda*, is ane gift given be ony man to his Maister and Lord, quhilke suld be his best aucht 17. October, 1470. Quhilk is conforme to the auld Lawes, *lib. 2. c. 10 tenentur*, 35. quhair ilk person makand his testament, suld recognosce and acknawledge his maister with the best thing he hes. Swa it is manifest that the *Herrezelde* is given, be reason of the tennents decease to his maister as ane gift, for acknawledging and honouring of him, and therefore in the Civill law is called, *laudemisim, à landando domino*. Item, in the auld Saxon and Dutch language, *Here* is ane hoist, armie, or weiffare. Swa (as sum thinkes) *Herrezelda*, signifies that quhilke is given to the Lord or maister, passing to the hoist, or be reason of weiresfare. For sik small husband-men having onely foure Oxen-gang of land, and thereby, be reason of their poverty, not able to passe to weir-fare in proper person, suld helpe their maister, passand forward theirunto: like as *Herischulda*, is the paine of him quha obeyis not the Proclamation maid for weiffare, for *schuld* is *debitum* or debt, and *heribarium* is ane charge or proclamation maid for weiffare, *Cuja. lib. 1. de feud.*

Hilda terra, Hida terra, ane pleuch of land, vide Carucata.

Homagium dicitur quando aliquis promittit se esse hominem alicuius domini, & stare, habitare, ubi voluerit dominus. Et super hoc facit homagium, id est, promissionem, ut sit suus homo. Vel homagium dicitur fidelitas hominis, pro rebus temporalibus facta domino. Cheffan. in consuetud. Burgund. rubric. 3. sect. 1. verb. des fiefs, & in sect. 3. nn. 3. It is a band of man-rent, quhen ony person promis is to serve ane uther, in sik sort, that he fall be friend to all his friends, and foe to all his foes, against all deadly. Lib. 2. c. predictis 60. Leg. Forest. c. quando 60. It is therefore called hominum, and suld be maid be the vassall being Minor or Major, to his over-lord. Lib. 2. d. c. 60. And the samin being made generally without exception of ony man, is called homagium cum ligantia factum, vide Ligantia. Homage differs from fidelity; first be reason of the persons makers thereof, for weemen makis no homage, bot onely fidelity, lib. 2. c. predictis 60. Because Homage concernis service specially in weifare, to the quhilk weemen are nocht subiect. And like-waies consecrat Bishops, makis onely fidelity for their lands and Barronnies, lib. 2. c. fieri 61. In this forme, I fall be leill and trus, to you my liege Lord, and to thir N. King of Scotland, and fall not heare zow skaith, nor see it, bot I fall let it at my power, and warne zow theirof: your counsell conceill, and heill, that ze schaw me: The best counsell that I can give you, quhen ze charge me in verbo Dei, and as helpe me God, and the haly Evangell. The second difference is be reason of the forme and maner: for he that makis fealty, kneillis nocht on his knees, Bot he that makis homage kneilis downe: utherwaies the forme of homage maid be Barronnes to the King, and the forme of fidelity maid be them to the King, are nocht farre different, for the forme of homage maid be them is this: I become zour man my liege King, in land, lith, life, and lim, worldly honour, homage, fealty and lawty, against all that live and die. Zour counsell conceiland, that ze schaw me: The best counsell schawand, gif ze charge me, zour skaith or dis-honour not to heare or see, bot I fall let it at all my gudly power, and warne zow theirof, Swa helpe me God. The forme of fidelity maid be the Barrones to the King, is this: I fall be leill and truw, to you and my Lord, Sir N. King of Scotland. I fall never see zour skaith nor heare it, bot I fall let it at my power, and warne zow theirof. Zour counsell schawin to me, I fall concile: The best counsell

counself I can, I shall give zow, quhen ze charge me therewith, for what
 sa helpe me God. *Fiant autem Homagia de terris & tenementis* things homage
liberis tantummodo & servitiis : de redditibus assignatis in dena- fuld be maid.
ris, & alio rebus. *Pro solo vero domino, non solet fieri homagium,*
excepto Domino principi, lib. 2. c. fuit 66. *Ita hic locus corrup-*
tus & difficilis legi debet. Concerning the exposition of the
 quahilk : It is to wit, that all homage is maid to the over-lord,
 and maister, quhairof suan are maist chife and principal, siker as
 the King, to quhom without ony exception, *in prema fide, que*
nullam exceptionem patitur jure optimo debetur. Uther over-
 lords are inferiour and subalterne, to quhom their vassalles are
 bound and oblibed, and fuld make their homage. And swa
 there is twa kindes of Homage, *aut enim est ligium, aut non li-* Homagium ligi-
gium, videlicet Ligantia. Baith the ane and the uther may be maid, *um & non li-*
pro terris, tenementis, annuis redditibus. Because ake free-hal- gium.
 der of lands, tennents, and annuell rentes, may make homage
 to his immediat superior for his lands or tenements, except
 tande the King and his elder over-lord, quahilk is, *Homagium*
non ligium, lib. 2. c. fieri 61. leg. Forest. c. quando, 60. Or he
 may make homage to his over-lord simpliciter, without ex-
 ception of ony person or uther over-lord, quahilk is, *homag-*
gium ligium. *Pro solo domino,* na homage can be maid, bot onely
domino Principi quahilk in homagium ligium. Because it is upon
 condition and covenant, that he to quhom it is maid, shall be
 maister, lord, and mainteiner allanerly to the maker therof.
 And quha makis the samyn, shall acknowledge him and mane
 uther to be his lord and maister for his maintenance, protection
 and defence, quhairanent he makis exception of na person, and
 swa this kinde of homage is maid to the King allanerly, *pro solo*
ipso dominio, quem solum & nullum alium omnes debent agno-
scere pro solo domino. *Hic locus admodum difficilis me diu mul-*
timque tarat, neque aliter me hinc extricare possum, sed in hac re
sum unicuique liberum est iudicium.

Huc sumus, Hoc est sumus, a French word, Oyez, in Latine audire;
 an hoyes, or cry used in proclamations, quhairof aye officiar
 of armes, or messenger dois conveene the people, and fair-
 wairnis them to heare him, *De maris c. sciendū, 17. de judic. c. 37.*

It is called alswa, ane Out-hoy, or crie. *Leg. Forest. c. si quis 91.* And ane thiefe suld be taken with the blast of ane horne, with clamour or hues, and presented to the Bailly. And gif thereafter he flies away, he may be slaine leisumly, and hanged up in the next gallous, *lib. 4. c. si quis latronem, 33.* Quhilk in ane part is conforme to the a&t of Parliament. *Jam. 6. p. 1. c. 21.* And in the Lawes of England. *An. 4. Edw. I.* Hee quha followes not the hue, rayfed for apprehending of malefactours, shall be accused therefore.

Husbandland conteiniſſis commonly twenty ſex aikers of ſok and ſyith land: That is, of ſik land as may be tilled with ane pleuch, or may be mawed with ane ſyth. For as ſum auld writers teſtifies, the Earle of *March* for the time, cauſed his ſervand *Simon*, or *Sim Salmond*, to diuid the haill land in the *Mers* into husband lands. Ilk husband-land conteiniſſing twentie ſex aikers, quhair pleuch and ſyth may gang. Quhat Earle of *March* this was, I am not certaine, bot I finde that ane cauſed *Simon Salmond*, his foreſalter with *Alexander Duke of Albany*, Earle of *March*, *Mar*, and *Garioch*; Lord of *Annandale*, and of *Man*, brother to King *Iames the thrid*. 8. Julii 1483. Bot the Lords of Councell eſteeme the zeirly mailes, fermes and deſtis of ane husband-land, to five markes, *in Registr. 1. Decem. 1543.* And ane uther husband-land lyand beside *Dumbar*, they eſteeme it to fourteene bolles beare, and three bolles quheſt, *in Registr. 14. Feb. 1544.* And ane uther husband-land to three pund. Swa I finde na certaine rule preſcribed anent the quantity and valour of ane husband-land.

Foreſalter of
Alexander
Earle of March
&c.

IN F A N G T H E F F E, *Lib. 1. c. 3.* ane Dutch word, quhairof I find diuſe interpretations: For in the auld lawes of the Brittons, maid be King *Edward*, Infangthiefe is ane liberty or power pertaining to him quha is infest theirwith, to cognosce upon thieft, committed be his awin man, taken within his awin dominion and lands; like as in ſindry auld buikes, conteineand the

the lawes of this Realme. Infangthefe dicuntur latro captus de hominibus suis propriis, saifitus de latrocino: and out-fangthefe is ane forain thiefe, quha cumis fra an uther mans land or jurisdiction, & is taken and apprehended within the lands pertinand to him quha is infest with the like libertie. In sindry uther buikes it is written, that infangthefe is ane liberty to fit and decide upon thieft, committed within the jurisdiction of him quha is infest therewith, be his awin man, or ony uther man quhatsumever, taken therewith, within his awin jurisdiction. And out-fang-thefe, is power or liberty to reduce, replege, and bring hame to his awin court, all thieves being his awin men, and committand thieft within his awin bounds, quha are fugitive and taken within ane uther mans jurisdiction, with the fang, that is, hand havand, and back-bearand, lib. 4. c. si quis 11. *Quon. attac b.c. nullus 22.* Quhilk fang in the civil law, is called *furtum manifestum*. Bot sindry uthers are in the contrair opinion, affirmand that it is not leasum to ony man have ane liberty of out-fang thiefe, to repledge or reduce his awin man, taken without his awin liberty forthief to his awin court, and there to do justice upon him: Because all thieves fuld underly the law, and be judged be him, within quhais jurisdiction the thief is committed: in sikh forme and maner, as is statute anent slauchter, and punition thereof, Ia. 1. p. 2. c. 89. Amongst the Interpreters of the civil law, I find the like controverie in this matter, *For. Bart. in l. Si dom. 48. Nu. 2. ff. de furtio. Quocunq; (inquit) in loco reperitur fur cum re furtiva, ibi potest puniri: Veluti furtum faciens Florentie, Si reperitur in alia jurisdictione veluti Mediolani, cum furto, potest a Mediolanensisibus puniri.* Quhais opinion sindry Doctours followis, as writis *Cheffaneus, In consuetud. Burgund. Rubr. 1. Verb. simple larrecin.* Nu. 15. Albeit sindry uthers are in the contrair opinion, alleagand, that the thiefe fuld be punished in the place quhair he committis the thief, *ut in additione ad Bartol. ju. de l. 48.* Conforme to the quhilk, it is statute be the Law of this Realme, that ane thiefe of stollen woodde, taken with the fang in ane uther Lords lands, fuld be arrested with the woodde, and fall suffer the Law in his court, fra quhom the wood was stollen.

*Furtum mani-
festum.*

Iam. 1. p. 2. c. 34. Mair-over ane thiefe is ordained to be punished in the place quhair the thiefe was committed, because the crime may be best tryed there. *Stat. 2. Rob. Bovi 5. 4.*

Infensare curiam. That is, quhen the Judge informis the futes in sic things quhairof they are ignorant. *Quon. attach. c. ubi ab aliqua 10.* Like as the Civill Law. *Judex potest supplicare ea qua advocatis in jure defunt.*

Iter, from *Itinera. b. e.* *Iter facere.* At *Iter Camerarii,* the Chalmerlane aire quhairof ane gud forme is written and extant in the buikis conteinand the auld lawes of this Realme. *Iter Insciriarii,* the Justice aire. *Quia Insciriarius debet itinare per regnum,* as it is written in the English lawes: For he suld make course throw the Realme, for ministracion of justice, and ride in competent and easie number, to eschew grievance, and hurting of the people. *Iam. 2. p. 6. c. 21.*

The Justice aire suld be halden twise in the zeir. For King David statute and ordained, that the Justice and his depute suld hald twa head Courts neirly. *Af. Reg. Da. c. statutus domini 18.* *Quon. attach. c. statutus 77.* And the Kings Justice, the Lords of the regalities, and also the Kings Baillies in his regalies, suld hald their Justice aires twise in the zeir. *Iam. 2. p. 3. c. 5.* Universally in all parts of this Realme, anis on the graffe, and anis on the corner. *Iam. 2. p. 13. c. 94.* *Iam. 4. p. 3. c. 29.* And over all the Schires of the Realme, in the moneth of *April,* and *October.* *Iam. 6. p. 11. c. 81.* Baith in the In-land, and alswa in the Iles, South and North. *Iam. 4. p. 6. c. 59.* Because the Iles and inhabitants thereof suld be ruled be the lawes of this Realme. *Iam. 4. p. 6. c. 79.*

Justice aires suld be halden, for the increase of justice and tranquillity of the Realme, for stanching of combars, slaunchers, rieles, thiefts, extortions and oppression of the Kings lieges. And to the effect justice may be universally throw the haill Realme ministred, for punition of the said crimes, sic authority, suld passe with the justice throw all the Realme, to the Justice aires, that trespassoures, sic as men-slayers, rievers, thieves, and committers of uther enormities, in disobeying and lechtyng of the Kings Lawes, may be punished without

The forme of
the Justice aire
or Court.

Justice aire
suld be halden
twise in the
zeir.

without favour. *Just. 4. p. 3. c. 29. Law. 3. p. 13. c. 90.*
 The Justice aye or Court being proclaimed at the Kings command, to be helden sik aneday as he pleasis, and in the Head-burgh of the Schire: The Justice fuld cause dittay to be taken up be his Clerkes diligently and faithfully. For the dittay is the principall and chiefe substantiall poins of the Justice aye; and the justice fuld follow the ordour thereof.

Dittay may be taken up, upon all crimes pertaining to the Justice, and his jurisdiction, as is manifest be the acts of Parliament. Reade the word Dittay in the Table of the said actes, and als upon the crime of lese-majestie, or treason: As the kynge, death of the King, sedition within the Realme: betraying of the Kings hoist or armie: Breaking of the Kings protection: Fraudfull hyding and conceiling of ane hirud or treasure, willfull fire, robbery, ravishing of weemen, murther, slaughter, theft, forstalling, all kynde of falsoing in doing of justis, in money, assise, weichtes, measures, writs: And generally, all other like erimes, quhilke be the Law are punished be death, or cutting off ane member. *Lib. 1. c. 2. leg. M. et. M. c. 3. Aff. reg. D. a. c. nullus 17. do Indic. c. Placitorum 8.* Mair-over, the Justice generall may set particular justice, Courte upon ony maner of erimes, quhen need is, for punishment of particular faultes that occurrie. Sik as recent slaughter, mutilation, ravishing of weemen. Quhilke hainous and capitall erimes may be first criminally persewed before him. And as for depredacions, ejections, spuylaces, the samyn being first civilly discussed before the Civill Judge ordinary, thereafter may be criminally persewed before the Justice and his deputes, at particular diets, set and appointed therefore, or be way of dittay in the Justice aye. *Law. 5. p. 4. c. 33.*

³¹⁴ Dittay may be taken up twa maner of waies, privatly and publickly: For the Justice and his deputes may privily take up dittay, be privile inquisition of malefactours and their receptours, be the aith of three god honest and faithfull men, and of the principall men: sik as the Chalmerlaine or officiat within ilk village or towne. *Stat. Alex. c. 2.* And mair-over, all Lords and headmen of all partis of this Realme, fuld give up ditey

upon notouf trespassors, without exception of ony person; to be taken and justified without remission. *Iam. 3. p. 13. c. 94.* And suld make trew relation there-anent to the Chancellar or Justice, quhen they fall be required. *Ia. 3. p. 14. c. 98.* And gif they be convict be ane assise in the contrair, they fall perpetually tine their court, in all tyme comming. *Lib. 4. c. assisa. 20. stat: Wilb. c. Assisa. 5.* Secondly, the Justice suld direct publickly the brieve of dittay to the Schireff: and his deputes, for taking up of dittay, quhair of the tenour followis.

Wilhelmus 8cc. Iustitiarius Domini nostri regis generaliter constitutus, Vicecomiti & Ballivi suis de E. salutem. Quis indi- Elamenta Regia, Deo duce, decimo die mensis N. proxime futuri, cum continuacione dierum, apud F. infra vicecomitatum vestrum levare intendimus, vobis pricipimus et mandamus, quatenus sum- monatis, seu summonori faciatis, legirime coram testibus lega- libus, de qualibet baronia, duodecim vel quindecim homines, ad hoc opus magis sufficientes. Et de qualibet tenendria, seu villa quatuor vel sex homines. Et de qualibet burgo, duodecim, vel sexdecim burgenses, ad hoc opus magis sufficientes, secundum quantitatem locorum et numerum personarum, in iisdem existen- nia cum seriendo, fabro, molendinario, brasiatore, & sella- re, cuiusque baronia, ville seu tenendria. Quod compareant coram clericis nostris, pluribus aut uno, dictis die & loco, cum con- tinuacione dierum, ad sursum reddendum indi- Elamenta regia. Et faciendum ac subeundum, id quod in hac parte, juris ordo requiri. Et sicut vos vicecomes, & ballivi vestri, ibidem coram cle- ricis nostris, dictis die & loco, cum continuacione dierum. Ha- ben, vobiscum summonitionis vestra testimonium, & hoc breve. Provideatis etiam pro expensis dictorum clericorum, quas vobis in primis computis, de exitibus justitiae reddendis, faciemus plenius allocari. Et hoc nullatenus omittatis sub omni pena, que competere poterit in hac parte. Datum sub sigillo officii nostri ju- stitiae. Quhilk briefe, the Schireffe suld report at the day appointed, in the place, quhair the dittay suld be taken up, to the Justice Clerke, and twa witnesses at the least with him, for to verifie the execution of the brieve, to be lauchfully done, conforme to the command of the Justice. Conforme to the precept

precept and command abone written; the Justice Clerke aye, or maa, conveenis the day, and in the place appointed, and there remainis susteined upon the Schireffis expensis (quhilk is allowed to him in his compts, of the issues and profts of the Justice aire) and takis up dittay be the relation, and disposition of the persons summoned, for the giving up therof. Quhilk dittay they suld keip quiet, and suld nawaies reveale the samin to ony person, or translate it utherwaises then it was given to them, nor change names, aye for aye uther: nor put out ony firth of the rooles; bot lauchfully and trewly suld report and deliver the samin to the Justice, and his deputes. *Iam. 2. p. 6. c. 28.* Dittay suld be given up be vertue of the Kingis Commission, direct to Earles, Lords, Barrons, Kneights, and speciall landed Gentlemen: And be foure of the Councell of every Burgh, quha fall make and give up dittay, be their awin knowledge, or be ane sworne inquest, or sworne particular men: upon all persons suspect culpable of the crimes and faults, pertaining to the jurisdiction of the Justice and his deputes. *Iam. 6. Partia. 1. c. 81.* Quhilk suld be likewise keipt quiet and reported, as said is, to the justice. And dittay being taken up, upon ony crime against ony persons: Neither judge, bot the Justice and his deputes may mell therewith. Like as the Wardaine on the Bordours, in his wardaine court, may nocht interrompt with ony thing that pertaines to the dittay of the Justice aire. *Iam. 2. p. 11. c. 42.*

The dittay taken up, in maner foresaid, The Justice Clerke, at command of the Justice, makis ane Catalogue, conteinand the names of the persons indited: And, upon quhom dittay is given up, quhilk is called ane portous. Together with ane uther Catalogue, quhilk conteinis the particular dittay, given and taken up, upon transgessours and malefactours, called *Traistres*. Baith the ane, and the uther, is delivered be the Justice Clerke, to the *Crowfier*: To the effect, that all the persons quhais names are conteinid in it, may be attached, and arrested be him to compair in the Justice aire, to answer to fik crimes as fall be im-put unto them. *Iam. 1. part. 13. cap. 139. Iam. 3. p. 14. c. 99.*

The

Attachment,
arrestments,
and forme
thereof.

The Crowner, in making his arrestment, fuld passe to the habitation and dwelling place of the persons, given to him in portuous, and thereafter make proclamation at three Paroch Kirkes, upon festuall dayes, and take soverity of them, sic as he will stand for to the King. And gif the persons swa arrested, be nocht strenzieable, The Crowner shall arrest their gudes, and put them in sure keeping, to the Kings use, quhill the said soverity be found: Or else take their persons, and put them in the Kingis Castle, gif ony be within the Schire. And gif there be na Castle: he fuld deliver them to the Schireffe to be keiped. *lam. 5. p.3. c.5.*

And mair-over, because findry persons indited, usis to flie and absent themselves, swa that the Crowner can nocht apprehend them personally, to arrest them: In that case, it is sufficient that the Crowner cum to the dwelling place of the saidis persons, and make them warning, and charge to compeare in the Justice aire next following, to aunswēr to sic accusations of crimes, as shall be imput unto them. And thereafter upon the thist Sabbath day following the said charge, the Crowner shall make open and publick intimation of his warning, charge, and premonition, maid to the saidis persons, be their names, in their Paroch Kirkes. Quhilk charges, premonitions, and intimations, shall stand to them for sufficient arrestments, the samis being dauchfully proven, as effectis of the Law. *lam. 5. p.4. c. 33.*

And mair-over, gif he cannot attache ony man personally, be reason of his absence, hee fuld arrest all his gudes moveable, and unmoveable, to remaine under sure pledges, and to be foorthwith delivered to the King: In case he be nocht aunswērable to the Law, before the Justice. *Lug. Malc. Mak. cap. 1.*

The Crowner shall arrest at all times, alweill before the cry of the aire, as after the samis, all them quha are given to him in portuous, be the Justice Clerke, and nae uthers. *lam. 1. Parla. 13. c. 139.* Bot all arrestments fuld be maid before the time of the beginning of the Justice aire, and seat of justice, and na waires after the samis. *lam. 3. Parla. 7. c. 58.* All persons charged to compeir in the Justice aire, fuld be attached and summoned

moned be the auld Law of the Realme, upon the space of fourtie dayes at the least. *Aff. Reg. D. a. c. ad summonitiones 19.* And all be it na man suld be attached or arraigned, except dittay be given up upon him. *Stat. Alex. c. 2.* Neverthelesse, in attachments or arraignments of ony person indited, na mention suld be maid of the cause or crime, for the quhilk he suld be indited; bot the same suld be concealed be the Clerke, and na waies revealed be him. *Stat. Wilb. c. statutum etiam 6. leg. Forest. c. Si aliquis 52. Quoniam attach. c. Si quis 49. Aff. reg. D. a. c. 6.*

All the indwellers within the towne or village, suld concurre Arreſting and assist the Crowner, in attachment or arreſting ony maleſt- of disobe- & tour, to comeir in the Justice aire, to underly the Law. *Stat. Alex. c. 2.* And fik like, quhen the Crowner receivis his portuous, containand the name of ony person indited, quha will not obey him, or quhom he dare not, nor is not of power to arreſt, he fall passe to the Lord of the Barrony, quhairin that person dwells: Utherwaies, gif he dwellis not within ane Barrony, he fall passe to the Schireſſe of the Schire, and require them to be borgh and soverty, to enter the laid person to the Justice aire; quhilk gif the Barron or Schireſſe refusis, the Crowner fall require them to ſend their officiars, and ſufficient number with them, to fortifie and ſupply him, in making his arreſtment, taking and keiping of the ſaid diſobedient person, quhill he be brocht to the Schireſſe to be keiped be him, untill the time of the Justice aire. *Iam. 3. p. 14. c. 99.* Mair over, the Crowner fall bring all persons arreſted be him, quha heſ not, or may not finde borrowes to the Schireſſe of the Schire, quha fall receive him in fuerty and firmance, upon the Kingis ex pences; and quhair it failzies, on their awin gudes, quhill the nixt Justice aire, and there present them to the Justice. *Iam. 3. part. 14. cap. 102.*

The Crowner, or makers of the attachments and arreſtments, ſuld not intromet or carry away ony guds or geare perteining to the persons attached: Bot the Lord, or Officiar of the Towne, fall ſuſteine them reasonably, upon the expences of the ſaid person, be the ſpace of ane day and ane nicht. *Stat. Alex. c. 2.* And gif the ſaid person cannot be personally apprehended: The Crowner may remaine in his dwelling-house ane day and ane nicht, and ſuld be ſuſteined with twa ſervands, and uther twa as witneſſes, and his Clerke ſuld have twa ſchillings, and ſa may nocht take any mair

of the guds and gearre perteining to the said person attached, albeit he be absent. *Leg. Malc. Mak. c. 1.*

Attachments and arrestments maid be Crowners & Serjeands, may be proven be them and witnesse. *Iam. 3. p. 7. c. 52.* That is, be the aith of the Crowner, and ane witnesse conforme to the auld consuetude. *Iam. 5. p. 4. c. 33.*

The Crowner shall have for his fee, for ilk man ameriat or componand, ane colpindach, or thretty pennies. For him that is clenged be ane assise, the Crowner shall have na thing. For ane man fild or condemned, the Crowner shal have all the dantoned horse not schod, *leg. Mal. Mak. c. 1.* Quhilk is to be understand, of dantoned horse, depute to warke, and not to the saddle; that was never schod, nor used to schoone. *Iam. 3. p. 14. c. 113.* The Crowner shuld have all the cornes lyand in binges and mowes, casten and broken, all the in sight, utensile and domisile, within the inner part of the house; That is, within the cruk hingand upon the fire: And all and sundry scheip within twenty: And all the Swine and Gaices within ten. *Leg. Malc. Mak. c. 1.* Attachments and arrestments being maid, or directed to be maid, or in the tyme of the making thereof: The Justice generall directes ane charge, called *preceptum itineris Inſtitiar.* to the Schireffe and his deputes in maner and forme following. *Wilhelmus Inſtitarius domini regis generaliter conſiſtutus Vicecomiti & Ballivis suis de E. salutem. Quia ordinamus iter iuſſitaria domini nostri regis, Deo duce tenen', de tota ballia veftra, apud E. Decimo die mensis N. proximè futuri, cum continuatione dierum. Vobis præcipimus & mandamus, quatenus ſummonatis, ſeu ſummonatiſ faciat, legitime & coram toſtibus legalibus, omnes Epifcopos, Abbatibus, Prioress, Comites, Barones, & ceteros liberè tenentes, toſtus ballie veftra qui ſectas debent. Ac etiam omnes illos, qui nihil niſi ſuas debent preſentias, qui de Domino noſtro rege tenent in capite. Quod compareant coram nobis ſeu deputatis noſtris, pluribus aut uno, dictis die & loco, cum continuatione dierum, ad perficiendum, ſubeuendum, & determinandum, id quod in hac parte, ordo poſtulat. Premoneatis etiam, omnes in diſtato, tam de novo, quam de veteri. & ſuos plegios, qui nondum coram nobis comparuerunt, & iudicium ſubierunt, ac eſſam illos, qui prosequi habent, vel defendere in dicto itinere, ſecundum formam juris. Quod compareant coram nobis, ſeu deputatis noſtris, pluribus, aut uno, dictis die & loco, cum dicta continuatione dierum, ad perficiendum & ſubeuendum, id quod in hac parte ordo requirit. Et ſitie*

facis vos Vicecomes & Baillivi vestri, ibidem, dictis die & loco, cum divisione continuatione dierum, habent, vobis cum summonitionis, ac præmonitionis vestra testimonium, & hoc breve. Provideatis insuper pro expensis nostris, bene & competenter. Quas vobis, in vestris primitis computis, de exitibus Inſtitutaria reddendis, vobis facimus plenius allocari: & hoc nullatenus omittatis, sub omni pena, quæ competit in hac parte. Datum sub sigillo nostri officii Inſtitutariae.

Quhilk precept and command is conforme to the Lawes of this Realme: Because all free-halders, haldand lands in chiefe of the King, within the Schireffedome, quhair the Justice aire is halden, suld compear and be present, all excuse set aside, except the same be of seiknesse, the Kings service, or tinsell of lands and heritage: To certifie and informe the Justice and his deputes, in sixt questions and doubts, quhilk incidently arisit, as emergent, and of before could not be fore-seene nor knownen. *Aſſ. reg. Dac. ſtat. 18. Quon. attach. c. ſtat. 77.* Sik as Bifhops, Abbots, Priors, Earles, Barrons, and uther free tennents, being summoned and warned to that effect, *Quon. attach. c. ad summonitiones 78. l. 4. ſtat. 19.* And they being lauchfully warned and not compearand, incurris the paine of the unlaw of Court. *Lib. 4. c. ſtat. c. 19.* And may be punished as favourers of the transgreſſours, and airt and pairet with them. *Iam. 4. p. 3. c. 29.* And they and all uther the Kings lieges, suld cum to the Justice aire, and all uther Courts, in sober and quiet manner, and suld not bring with them maſſa persons then ar daily in their household and families. And being come to their Innes and ludeinge, suld lay their armour and weapons from them, and use na weapons bot their knife. *Iam. 2. p. 12. c. 83.* Mair-over, all Lords, Spirituall and Temporall, Barrons and uthers, command to the Justice aire, suld na waies mainteine, fortifie, ſupply, defend, nor be Advocates, nor stand at the Barre, with manifest traitours, menſlayers, thieves, rievers, nor uther trespassours, nor persons perteyning to themſelves, or uthers: Saifand, it fall be leasum to them in sober waies, to stand with their kin and friends, in defence of them, in their honest actions. *Iam. 3. p. 14. c. 98.* Quhen the Justice aire is to be halden upon the Bordours: The Wardaines, within their Wardainries, and their deputes, with the free-halders of the Schireffedome, being warned thereto be the Schireffe, be open proclamation, suld convoy the Justice and his deputes, to the place appointed, for halding of the Court: And accompany them, in during

during their residence, and untill they be out of the boundes of their Schireffedome, and received be the nixt Schireffe. *Iam. 6. part. 11. c. 81.*

In the Justice aire, fuld compeir all persons attached and arrested, conforme to the dittay given and taken up upon them, quahairof, some were arrested of before, to have compeir'd in the Justice Court proceeding, already ended and expired, and compeir'd not in the samin : quhais names are given to the Crowner, to be of new attached and arrested, to the aire following, as of before : Uthers are of new indited, upon quhom na point of dit-tay was taken up, in ony time by-gane, quhais names are comprehended in ane Catalogue, called Portuous. All the foresaids persons indited, baith of auld and of new, fuld be attached and arrested be the Crowner, to compeir and underly the Law, the time of the Justice aire, as is manifest be the precept foresaid, direct be the Justice generall, to the Schireffe.

All persons arrested, that may be apprehended, the time of the aire, in the Tolbuith, or in the towne, quhair the Justice is, fall be taken and delivered to the Justice, to be justified for their crimes and trespasses. Swa that the arrestment be maid before the time of the beginning of the Justice aire, and seat of Justice. *Iam. 3. p. 7. cap. 57.* And quhair lands lyand in sindry Schireffedomes, are annexed and united in ane Barrony : The inhabitants thereof, fall answer in the Justice Court, quhair the lands lyis, and the Lord, or Proprietar of the lands annexed, givis presence or service, in the court of the Schireffedom, within the quhilk the Barrony lyis, to the quhilk the lands are annexed, *Ia. 4. p. 6. c. 93.* For in this case, respect and consideration is had to the naturall situation of the lands, and to the jurisdiction, within the quhilk they lye : rather nor to the imaginari, and civil forme of lying, of the lands be annexation.

Inhabitants of annexed lands.

Steward-
ries and
Baillieries

Attour, all inhabitants of Stewardries and Baillieries, fall cum to the Head-burgh of the Schireffdomes, quhairin they lye : And within the quhilk Head-burgh, the Kingis Justice aires are halden. *Iam. 6. p. 11. c. 81.*

The Judg.

The Judge in the Kingis Justice aire, is the Kingis Justice generall, or the Kingis Bailly, in his regalles, havand lauchfull power and commission granted to them. *Iam. 2. p. 3. c. 9.* For the King, or the Justice generall, may make aucht deputes, quha with ane de-
pute

depute of the Thesaurar, and ane uther of the Justice Clerke, suld passe severally throw the acht quarters of the Realme, and hald Justice Courts. *Iam.6.p.11.c.81.*

The Justice general, suld have for his sustentation, ilk day of the <sup>The Ju-
stices ex-
pences.</sup> aire, five pound. Like as the Justice Clerke suld receive for ilk man
clenged be ane assise, and drawn furth of the Rolles, four pennies.

And for ilk man ameriat, or componand, *ijs. Leg. Mal. Mak. c.2.*

For ilk Attorney and Commission, twa shillings. For ilk man quha producis ane remission, twa shillings. For ilk man that cummis in the Justice will, twa shillings. For ilk man convict and fyled, twa shillinges. For ilk Letter of witnesse, sex shillinges, acht pennies.

The Schireffe suld be present, as he quha is warned be the Justice <sup>The Schi-
reffe.</sup> precept to answer to all the points thereof: And touching the <sup>The crow-
ner.</sup> execution of his office, togidder with the Crownar, quha suld an-
swere for his attachments andarrestments, and verification there-
of: And the Schireffe, with the Crownar, suld thoill ane assise, <sup>The crow-
ner.</sup> the last day of the aire, anent the usynge and execution of their of-
fices, to quhom justice suld be ministrat, as they fall be found in-
nocent or culpable. *Iam 3. p.14.c.103.*

1 The day of compeirance being cum, to the quhilk the Ja- <sup>The form
of the
Court,</sup> stice aire is cryed and proclaimed: The Justice and his deputes, suld compeir with all uther persons, charged and commanded to concurre and assist with them. At the quhilk time, the sutes suld be first called, with their Lords. For albeit the Saitures compeir, <sup>The sute
of Court.</sup> nevertheless, the Lords and Maisters are obliged likewise to com-
peir, and give presence to the Justice in his aire: They being lauch-
fully summoned and charged to that effect, be open proclamation, and be the Justice precept abone written.

2 The Commission and power given to the Justice, suld be pro-
duced and red: And gif the Commission be given and granted to <sup>Commis-
sion.</sup> maa persons nor ane conjunctly, they suld be all present; uther-
waies it is na lauchfull court. Bot gif they be constitute conjunct-
ly and severally: It is sufficient that ony ane of them be present.
And mair-over, the Justice may not make and constitute deputes
or substitutes under him, except he have special power in his com-
mission, to do the samin. *Lib.4.c.5 unus 27. 3.* Thirdly, the Judge ^{The feni-}
suld begin and fense the Court, conforme to the common ordor ^{ing of}
and consuetude used and obserued. *Iam.6. p.11.c.81.* Quhilk suld ^{Court.}

The dep-
ster. be done at eleven houres before noone. *Iam. 6. p. 11. c. 86.* 4 Fourthly, the Court beand affirmed, the Dempster suld be called and cau-
sed to be sworne, that he fall lealely and trewly use and exerce his

The sutes. office. 5 Fiftly, the sutes suld be called. *Iam. 6. p. 11. c. 81.* Zit againe as of before ilk man, twise with their Lords and maisters and the absents decerned to have failzed, and therfore suld be unlawed, and gif baith the suiter and his Maister be absent, ilk ane of them be themselves suld be ameriat.

The assise. 6 Sixtly, the assisors being summoned be ane precept direct be the Justice to that effect, suld be called, ilk person under the paine of fourty pounds, and the Justice may cheise ane or maa, as he pleasis, of the best and maist worthy of the countray, before quhom the bail accusation, reasoning, writs, witnesse, and uther probati-
on, and instruction quhatsoever of the crime, fall be reasoned and deduced in their presence; and also in the presence of the partie accused, in face of Judgement. *Iam. 6. p. 11. c. 60. 61.* And it is to wit, that he quha givis up dittay upon ane uther, suld not passe upon his assise. *Iam. 1. p. 4. c. 50.*

7 The Justice suld proceed in his Court, and put the offenders, gif ony be already in prison, to the knowledge of ane assise, and minister justice upon them, as they fall be found innocent or cul-
pable. *Iam. 6. p. 11. c. 61.*

The per-
sons at-
tached. 8 He fall call thereafter the pledges and cautioners of persons attached, quha found soverty before the Justice ony time preceeding, at ony particular diet or court, to compeir the thrid day of the aire, or sooner, upon fifteene daies warning. *Iam. 6. part. 11. cap. 81.*

Pledges of
entres of
uthers. 9 This being done, the Clerke fall visit and consider the haill rolles and journel, and call all them quha are absent from the aires preceeding. Upon quhais heads and names is writte, *Prima dies, secunda dies, tertia dies*: Be the quhilk, he understands, fra quhat aire or court they were absent. And that they may be therefore ameriat, ilk ane of them be them selfe, be reason of their absence. And gif the saids persons nocth compeirand of before, now compeiris and are present: The Clerk fall luke the auld dittaies and rolles, and accuse them, conforme thereto, in the best manner he may gudly. And gif there be na particular point of dittay, or accusation, he fall lay common dittay to their charge.

10 Thereafter the Justice fall call the persons newly indited and

and arrested; And gif they or ony uther of the arrested persons foresaidis, compaire, they suld be presented to the Court, and to the Schireffe, quha suld answer for them, untill justice be done upon them.

11 They quha are attached, and compeiris not, may na waies be accused for their not compearance, bot be the Kings service, quhilk suld be verified be the Kings letter, produced in Court: or be reason of seiknesse: Quhilk be the auld Law, was tryed be ane assise, quhider it was crew, or feinzie: Albeit the partie was absent. *Stat. 2. Rob. B. c. 5.* Bot now it suld be proven and verified be the Minister of the Paroch, within the quhilk the person excused dwelis: And be twa witnessis personally compearand in judgement. *Iam. 8. p. 9. c. 114.* And concerning persons absent, it is generally ordained, that every Baron and Free-halder, fall answere in the Justice aire, for his awin men, dwelland upon his awin proper lands, tackes, steadinges, rowmes, and Barronies, and fall be halden to enter to them, or else answere to the King, for their unlawes. *Iam. 5. p. 3. c. 6.* Quhat is the unlaw in the Justice aire, *vid. Americamentum.* Bot for the better understanding of the Lawes, concerning fugitives and absentes: It is to wit, that the auld Lawes of this Realme, gif the party defender being lauchfully warned compeir not, bot send ane effoinzie or excuse; the sam in being reasonable, was received and admitted to the Judge, three sindrie dayes or Courts: And gif he compeir afterward, and verified not his effoinzies to be lauchful, he was diffeinzie and poyned therefore. Bot gif he neither came, nor send ane excuse. The partie perseuer compeared at lauchful day and time of Court, and offered him reddie to persew, quhilk he did be the space of three dayes. And the thrid Court beand by-past, the defender was summaoned to compear the fourth day. The quhilk fourth Court was peremptour, because sentence definitive was given against him, conforme to the claime and petition, gif he compeirred not. *Lib. 1. c. summonitus 9.* The like fornie and ordour of process was observed in Justice Courts. For mention is maid of the first aire. *Iam. 3. p. 13. c. 94.* And of the second aire. *Iam. 5. p. 4. c. 32.* And of the fourth Court. *Iam. 3. p. 14. c. 101.* And gif ony person indicted, and lauchfully attached, compeirred not, the said three Courts, his pledge or law borgh was called and ameriat for the first, second, and thrid Court, and at ilk time after ilke ane of the

The
fourth
Court.

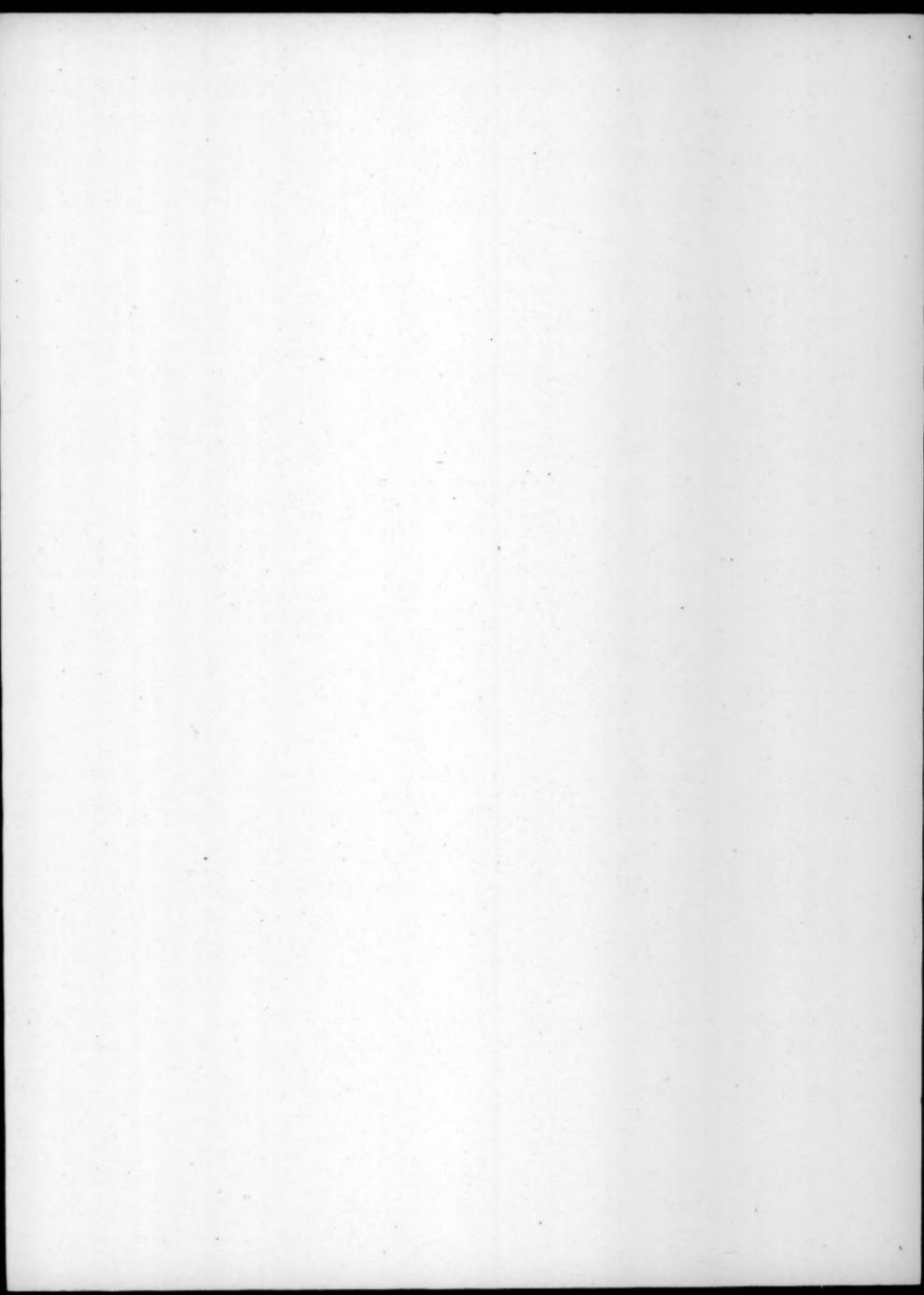
the saids Courts, the said pledge was poynded and distreinzierd, and the distresse or poynd was letten to borgh, and made free under caution, that the said person indicted, suld compeir in the nixt aire following, to underly the Law. And gif he was absent at the fourth Court, the peremptour doome was given against him : That sikh ane man was in ane amerciament, and at the Kings Horne, and his lands and all his gudes escheit to the King, except he come within fourtie dayes, and did bide the Law. And thereafter the Court beand ended, the said peron was denunced rebell, and put to the Horne openly at the mercat croce of the head burgh of the Schire. Quhilk forme of Processe, was sa lang and prolix, that in mony zeires parties hurt and grieved, get na justice : And trespassours and crimes passed unpunished : quhilk was the occasion to mony persons to commit crimes, trusting na hasty punition nor correction to follow. Therefore King James the fifth, statute and ordained, that the Processe of Justiceaire, and Justice Courts, suld be peremptour at the second aire or Court, swa that fugitives not compeirand at the second aire or court, suld be denunced the Kings rebell, and put to his Horne, and all their guds his escheit. *jam. 5. p.4. c.32.*

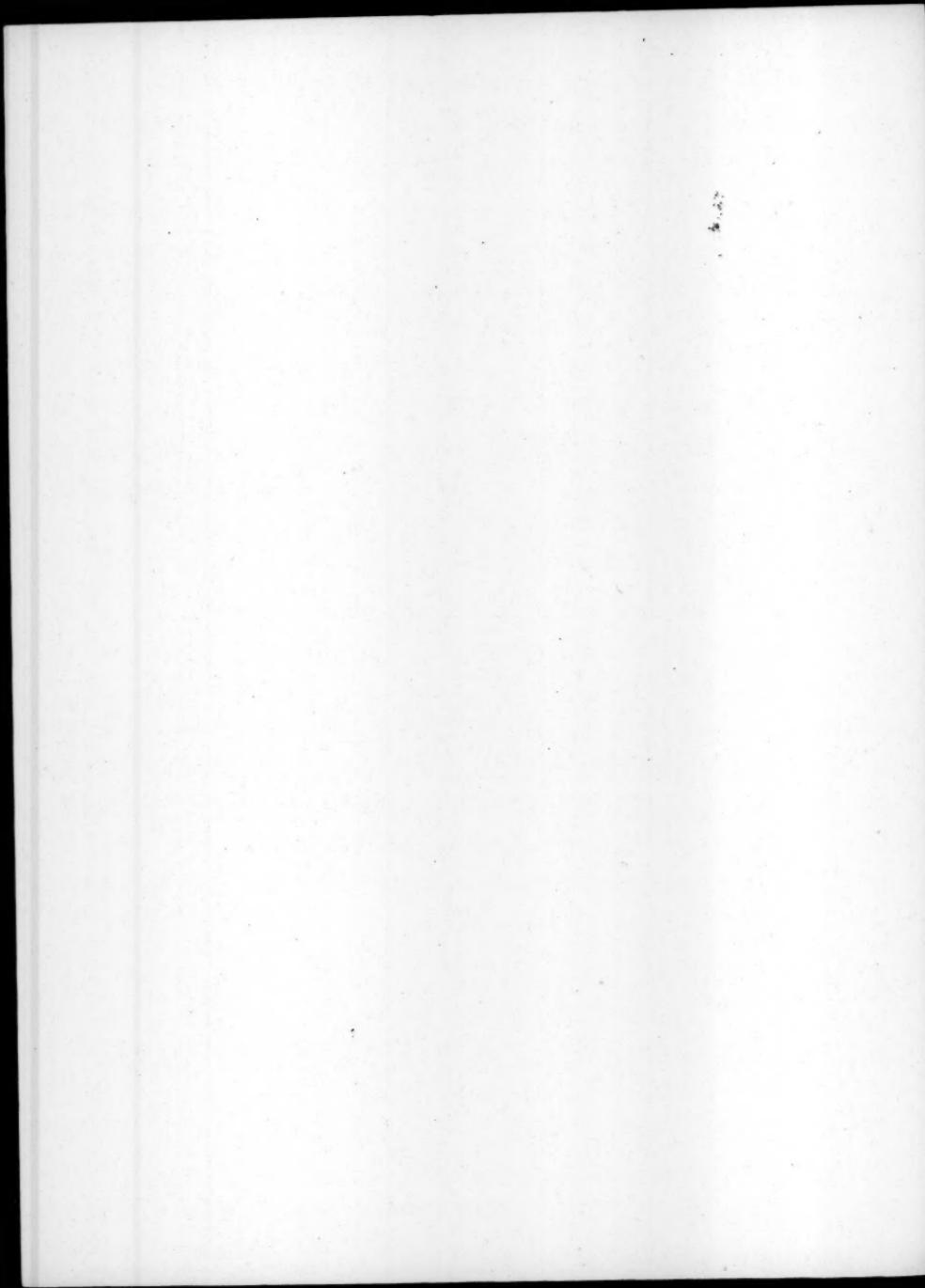
The secōd
Court.

12. Hereafter the Lords of Regality may desire their men to be remitted to their awin Justice Court, and replege them, schawand their commissions, power, and payand therefore; and livand ane caution behind them, called *Culbrach*, quha sal be aſted and obliſhed in the Justice Court, that justice sal be done and ministrat in the Court of the regality, to the party compleinand upon the perſon repledged, *vid. Culbrach.*

Replegia-
tion of
Burrowes.

13. The Justice or his Clerkes, sal demand and speare at the Baillies of Burrowes, gif they be reddy to present ilk burges within their burgh, indited to the Kings Justiceaire : Quhilk persons suld al enter personally before the Justice, under the paine of ane unlaw and amerciament of Court : quhais names the saids Baillies sal put in writ, and deliver the samis to the Justice or his Clerkes. And gif they wil borrow or repledge their saids neighbours; they sal schaw their commission, and pay therefore : And thereafter they sal draw, or obliſh themselves, their commission, and burgh in pledge : That thay persons quhom they repledge, and quhais names they give in writ, sal he furth-command, and answerable to the Lawes, and challenge of the Justice. At the quhilk





quhilk time, hee and his deputes sal assigne to them ane certaine day, to underly the Law, either in that aire, or thereaftir, quhen he sal think speedful. And at the samyn time, it is leasum to the Kings Justice, sittand in the principall burgh of the Royalty, to give ane assise to all the saidis burgesSES, repledged of their awin nychbours, that best knawis the veritie, dweland in the same burgh with thei. And gif there be not ane sufficient number of the said con- burgesSES: It sal be leissful to choose ane assise of the burgesSES of the said Head-burgh, quhair the Justice and his de-putes sittes, as hee sal thinke expedient. Jam. 4 part. 1. cap. 1.

14. Gif the partie accused compeirand, alleagis to his re- Remissions, or mission or respet, hee sal produce the samyn in Court, and respettes. fall finde ficker borrowes to assith and content the partie compleinand, within fourty dayes following: Quhairupon ane act is maid in court, quhairby he and his cautioner are obliſhed to assith and satisfie the partie, within the space foresaid: Quhilk is called the act of Adjournal. And gif he refusis to finde caution, he sal remaine in the Kingis pri- son, quhil the said fourtie dayes be run, and then his remis- sion sal be expired, and of na value. Jam. 2. p. 14. cap. 75. And in this case, quhen ony man takis him to his remission, respet, or composition, in the Justice aire, or Justice court, and findis sovertie to assith the partie: It is leasum to the partie to call the said sovertie before the Lords of Councell, conforme to the act of Adjournal, maid there-anent. Jam. 5. p. 3. c. 7. As gif ony man becummis sovertie for ane uther, anent spuile committed be him, and for restitution or sa- tisfaction to be maid be him therefore. He as sovertie may be called and conveened for the guedes spuilezied. For the vio- lent prices thereof, for the damage, skalh, and interest sus- tained be the perſewer, throw the committing of the said spuilezie, 10. Martii 1500. William Keith, contrair the Earle of Caithness. And the said sovertie being condemned, hes gud action against the principal party for his relief, be ane simple

Simple charge upon sex dayes warning, without peremptour
summons, or ordour of table, 11. Julii 1543.

15. Gif the person attached compeiris in the Court, and
beand accused, hes na revelant exception, or reasonable de-
fense, of necessir he suld passe to the knowledge of ane assise,
conforme to the Lawes of the Realme. At the quibilk time,
the haill assisours suld be called, and the absensis americiat.
Iam. 6. p. 11. c. 76. And the partie accused, suld be heard to
propone al and fydry his lauchful defences, against the haill
assisours, or ony of them, to repel them, as he may best of the
Law, and stay them to passe upon his assise. At this time the
person compeirand and accused, cummis in the will of the
Justice, or he is clenged be ane assise: or he is fuled and con-
vict. Gif he submittis himselfe, and cummis in will, It is
1. asum to the Justice, to draw him furth of the Rolles, and
to declare his wil, and to charge him to pay ane compo-
sition, or sif ane summe of silver, as he pleasis to modifie, after
the quality of the crime and person, for up-taking and in-
bringing quhairof, the Justice aire being ended: The Justice
directis his precept, called, *Præceptum extralitus itineris justi-
tiae*, in this forme.

*Wilhelminus justiciariorum generalis, Vicecomiū & Ballivis suis
de F. saltem. Quia in itinere justiciariorum Domini nostri regis,
per nos ultimò tem. apud. F. decimo die mensis. N. Anno Domini
6. Diversi fuerunt americiati, & pro suis delictis convicti,
& in nostra voluntate positi. Quare vobis præcipimus & man-
damus, quatenus de infra scriptis personis subscriptas summas le-
vari faciatis & pro eisdem secundum formam juris distingatis.
Et primò d: N. summam &c. De quibus quidem summis solva-
tis pro expensis nostris in dicto itinere summas. N. Residuum
vero dictarum summarum solvatis cofferariis Domini Nostri
Regis: Vel cui vobis assignabitur infra tempus legitimum, hoc
est infra quadraginta dies primum diem dicti itineris proxime
& immediatè sequens. Et hoc nullo modo omittatis.*

*Persons char-
ged.* Quhen ony person is clenged be ane assise, the Justice
directis his Testimoniall, called *Litera testimonialis de ho-
mine*

mine mundato per affisa, in manner following.

Wilhelmu justiciariorum generalis, universis & singulis ad quorum noticias presentes litera pervenerint, salut. Novitatis quod comparens coram nobis in itinere justiciarie Domini nostri regis tenuit, apud F. decimo die mensis N. Anno Domini &c. I. de B. indictatus, & per rotulos Regios calumniatus, de arie & parte talis facti, vel talis rapina, vel incendiis &c. Quam quidem calumniam dictus I. in facie judicis penitus denegavit. Et super hoc ad recognitionem affisa utique se submisit. Qua quidem affisa hinc inde diligenter consulta. Et plenius avisata, dictum I. à dictis calumnis sibi impositis, quicunque declaravit penitus & immunem. Et hoc omnibus quorum interesse poterit, notum facimus per presentes. In cuius rei testimonium sigillum officii nostri appendi curavimus.

All thay persons quha commis in wil, and are drawen furth of the Roles, and also they quha are clenged be an affise, can na waies in ony time the easter be called or accused for that crime, for the qubulk they cum in wil: for anis quit and clenged, ay quit and clenged. Zit nevertheless, gif ony person be accused criminally of life and lim, at the instance of ane uther private man allanerly, and is clenged and maid quit: The Kings Justice and his deputes, be reason of their office, may thereafter take inquisition anent the said crime, and in the Kingis name accuse the committer thereof, conforme to the Law. Notwithstanding that of before, he was clenged thereof be ane affise. Lib. 4. c. si querela 58. Because the action or pursute of ane privie partie, prejudis not the King in his richt or entres, competent to him, be reason of his Royal power. And therefore the Thesaurar, and the Kings Advocate, may persew all malefactours, albeit the parties desist, or privately agree amongst themselves. Iam. 6. part. 11. cap. 76.

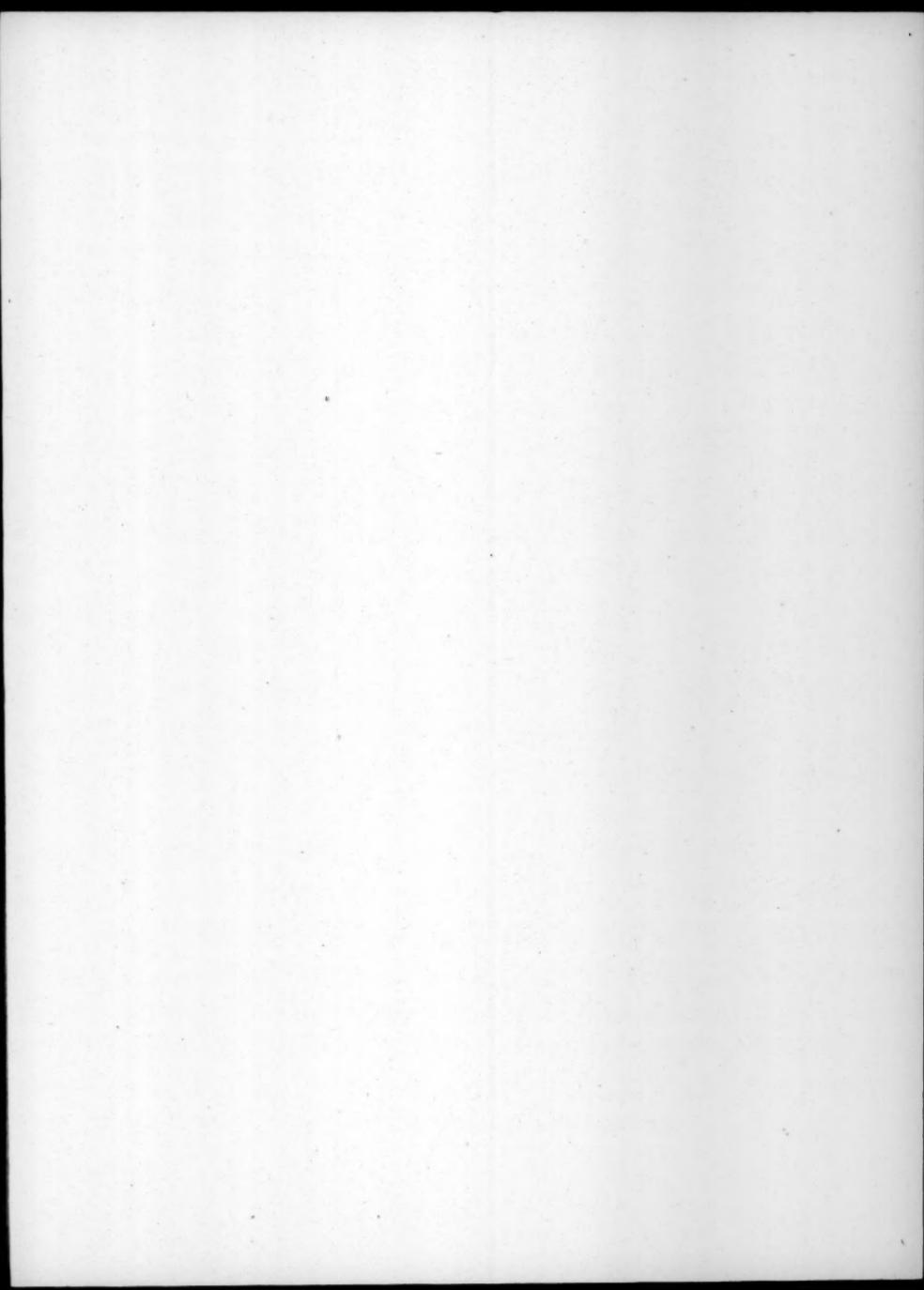
Quhen trespassours and malefactours are convict, as brea- Persons filed
kers of the Statutes, and actes conteinand dittay, they aucht and convict.
and suld be punished according to justice, and conforme to
the tenour and paines conteined in the acts broken and con-
traveened

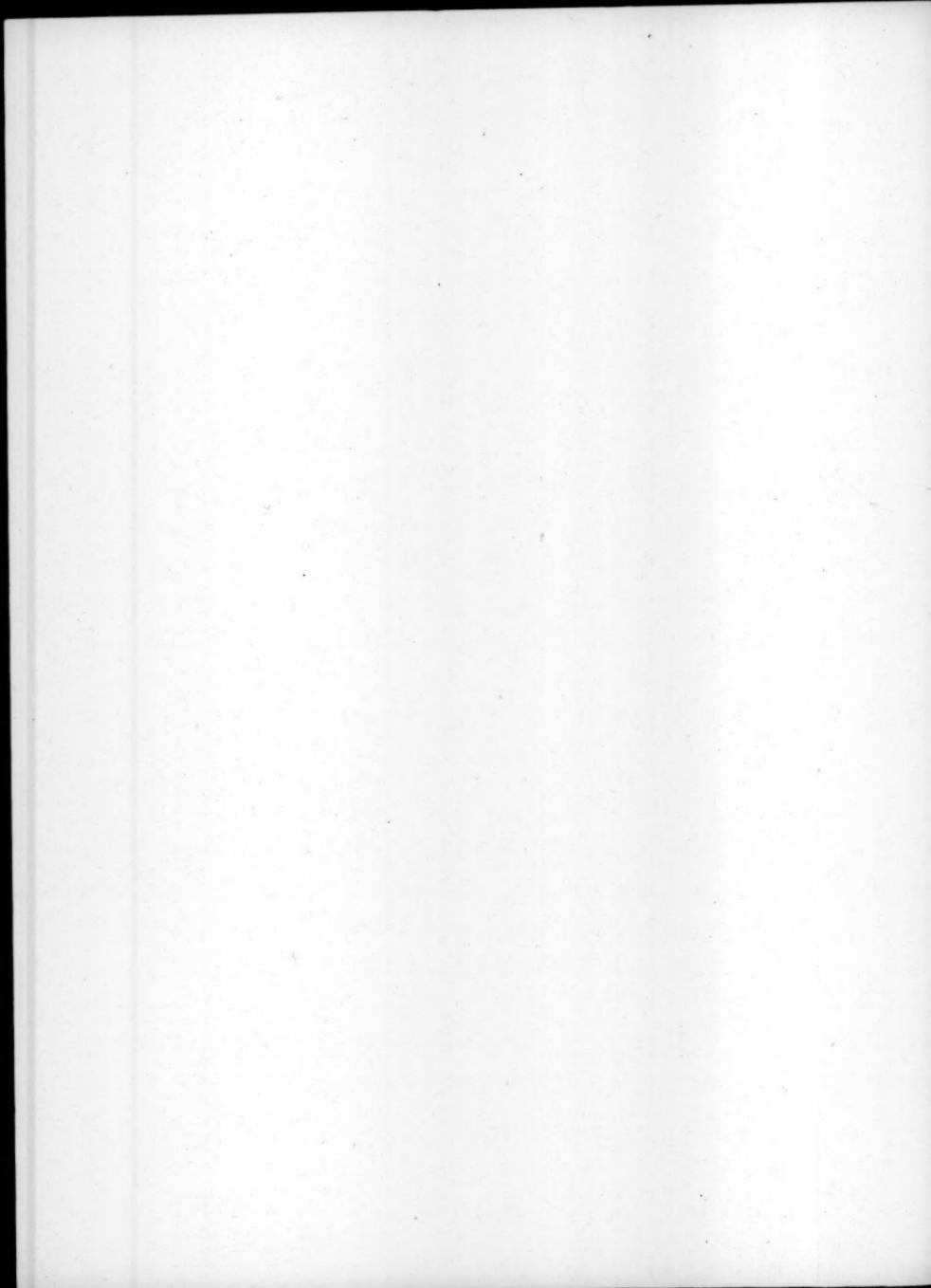
traveened be them, *Iam. 4. part. 4. cap. 45.* And sa gif the paine conteined in the act be pecunial, they suld pay the famin. And gif it be capital, they suld underly and suffer the famin, except the King give them remission and special grace there- anent. As for example, landed men, lauchfully and ordourly convict of common theft, receipt of theft, stouth, or riefe, incurris the paine of treason, and therefore, suld be punished be tinsel of life, and confiscation of lande and guds, *Iam. 6. part. 11. cap. 50.* Always the Crowner may not intromet with ony guds or geare perteining to ony trespassour, convict and condemned to the death, at his awin hand, until the Schirffe or his deputes passe or sende with him, and visie al the hail gudes, and deliver to the Crowner sa-meikle, as hee suld have be reason, and as perteinys to his office, and bring the remanent to our Soveraine Lord, and his Thesaurar. *Iam. 3. p. 14. c. 102.*

The end of the
Aire.

The Justice aire beand ended; The Justice shall deliver the extract thereof, subscribed be him to the Thesaurar, quha sal cause take up the summes conteined therewith, and make compt thereof in the nixt Checker, in the quhilk compt sal be allowed the expenses and charges of the Justice, his deputes and clerkes, as the famin sal be modified be the Lords, Auditours of the Checker, *Iam. 6. p. 11. c. 81.*

LAST





¶ *gudes* is a particull. of *verbalis*, i.e. all otherwaies
than by *scripturam* or *ius*. *gude* is a *gude* or
buse being *reverentia* *gude* is a *gude* or *gude* *lib*
and *gude* is a *gude* or *gude* or *gude* *lib*

L A S T Of *gudes*, how meikle it containis, *vid. Ser-
plath.*

Let lands to borgh, dimittere terras ad plegium, *vid.*
Plegium, *vid. Recognitio.*

Lex Apparens lib. 4. c. 4. de judic. c. 24. Leg. Forest.
cap. Item in placito. 16. Signifies the law concerning sin-
gular battell. And *lib. 4. c. 1.* It signifies ane inquisition made
or taken be ane inquest or assise. And in the Law of Nor-
mandie, *lib. 9. c. 10.* It is called *Loy apprisant*. And *lib. 8.*
c. 3. All quarrells of possessiones or moveables, quhilks ar
called *Chattel*, or lands and immoveable *gudes*, suld be
decided by common and simple quarrelles, conforme to
ordour of law, or be lawes *Apparisantes*, quhilks ar de-
terminat, ather be singular battell, or be ane inquest of the
cuntrie, utherwaies called, *Loy recognoissant*. It is like-
waies called *lex paribilis, a parium pugna, vel concertatio-*
ne, from the combat of peeres and Campiones: or lex duel-
bitum, quhilk law is ungodly, and not to be used among
Christianes, Cnia. lib. 1. de feud.

Liberatio, Ane fee given to ane servand, or officiar, quhilk
is called ane *Liverie*, *leg. Mal. Mak. c. 4.* Feodam or fee,
is commonly of silver, and money, and ane liverie is of
meate or claithes. Bot this distinction or difference is not
perpetuall.

Liberum Tenementum, is commonly and properly cal-
led, Franck tenement, or Life-rent. In Latine, *Usus fru-
ctus*, conforme to the daily practique of this Realme.
And nevertheless, *Liberum tenementum*, signifies the
property, fee, or heritage. *Donatio liberi tenementi, &*
concessio hereditatis, is baith ane, *lib. 2. c. potest 21.* *Tene-
mentum Regium*, is called the Kings heretage. *Lib. 2. c. Di-
citur. 74.* In the quhilk signification, *Minordicitur esse in*

De verborum significacione.

tenement Lib. 3. c. 6. Remanere 26. Et placitum de recto & liberis tenementis per breve dominum Regis de recto deber terminari. Lib. 1. c. 6. And King Alexander gave and disposed to *Duncan Forbeys*, tenementum de Forbeys. That is, the lands and heritage of Forbeys, quhilk Charter is zit extant. vid *Tenementum*.

L I G E A N T I A, Lib. 2. c. Fieri. 61. From the Italian word *Liga*, an League, bande, or obligation: as *homilgious*, an man, quha is obllished and bound, fra the quhilk cummis, *Alodium, in liberto, fendorum, quasi possessio sine Lodeo*. *Cuius possessor nescire est, loodes sine ligio*. And *ligeantia*, is the mutual band or obligation, betwixt the master and the servand. Lib. 2. c. pluribus. 14. lib. 3 c. Si quis super. 36. Vid. *Affidatio*. Item, the mutual band and obligation, betwixt the King and his Subjects, quhairby we are called his lieges, because we are bound and obllished to obey and serve him: And hee is called our liege King, because he suld maintene and defend us. And the Doctours of the Law writs: *Quod imperator dicitur dominus totius mundi, eodem modo quo rex regni. I. bene a Zenone. C. de quadr. prescript.* Quhilk suld be understand concerning the defensie and maintenance, and not anent the propertie. *Quia reges non sunt domini privatrum possessionum*. *Glos. in L. Barbarius de Offic. prator. Homagium ligium, vel cum. ligeantia factum*. Is quhen the vassal absolutely makis homage to his superior, against all and quatsurever persons, without exception of ony man, quhilk suld be done to na vther, bot to the King alianerly. *Homagium non ligium, vel sine ligeantia*, is that quhilk the vassall makis to his Over-lord, excepting and resevering the fidelite, quhilk he aucht to the King or his elder over-lord or master. Lib. 2. c. fieri 61. *Cheffanau in Conscriptus. Burgund. Rubric. 3. scit. 3. Verb. & homag. No. 10. cum. seqq.* Quhilk vassall is called, *vassallus non homologus*. Lik as the uther is *vassallus homologus*, in quhais aith na person is excepted, *Cuiac. lib. 2. defend.*

Homagium.
ligium.

Non ligium.

noch abnahm und sich niemand buss vorzog sich nicht vor
die Sicht der Lebendigkeit und warf sich auf den Boden und blieb dort
liegen, als ob er **M.** vor Angst und Schrecken
so sehr erbebte, dass er nicht mehr aufstehen und sich bewegen

11

MACHAMIVM, *Methamptum*, from the auld French word *Méhaigne*, quihilk wee call Mainzie, hurt, mutilation, demembraunce, or the losse or tisself of ony member of ane mans body: or the breaking of ane bane, or quhen ane mannis harne-pan, or ony parte thereof is cutted away, or dung in. *lib. 4. c. 4. Res cum manuio dicuntur res minus fana. lib. 3. c. excusa 8.* Be the auld Law of this Realme, he quha is mainzied, hes ane just cause to excuse himselfe fra singuler battell, and zit he will be compelled to purge, clenge, and defend himselfe, *Per ignem & aquam. lib. 4. c. 4. cap. Si quis pro latrocinio 15. Quoniam attach. c. Si quis 58. lib. 4. c. affisa 20. stat. Alex. c. quicunque 31.* Quhairof the power perteinis not to ony Baronne: For na subiect may compel ane uther to purge himselfe be fire or water. *Stat. Alex. c. præterea. 33.* This kinde of purgation was ane maist scharpe and extreame kinde of purgation and triall: Like as we daily use in common proverbe; quhen we say be way of menacing and boasting, that we sail gar ony person pas *per ignem & aquam*; that is, to suffer and underly that kinde of triall *Iudicium Dei*, that is maist severe and extreame. It is called *judicium Dei*, the judgement of God, as knawin to him allanerly. *Iter. Camer. c. cum hoc. 25.* And was in great use amongst the Longobards, as is exponed be *Hotomannus de feud. c. 44.* *Ordalium*. In the auld Saxon tongue, and zit in Dutche, it is called *Ondell, ordalium*, from, or, quihilk they use as *privativa particula*, and *Del*, quihilk signifies ane parte or portion: quhilke worde wee use in the same signification: and iwa, *Ordeit*, signifies innocent, quha hes na parte, or is not participant of the crime quhairof he is accused. Purgation be the fire, is quhen ony man with bair feet, passis throw the fire, without ony harme or herte, or quhen

Purgatio per
ignem.

ony man dois carry and beare in his bare hande, heot
bunand Iron, without ony hurte of his hande, quhilke is
called, *Ferri candentis judicium*, in the quhiik casse, hee
was decerned to be *Ordeil*, or na-waies participant of the
crime. Vtherwaies, gif his fute or hande was hurte be the
fire, or heote Iron; hee was condemned, as participant

Purgatio per
aquam.

and fowle of the crime. And fik-like, *Purgatio per aquam*,
is quhea ony man suspect or accused of ane crime, was
casten in heote or cald water: And gif hee passed to the
bottome, without ony hurte of his boodie, hee was decerned
Ordeil, and innocent. Bot gif hee did not fall to the
grounde, bot did swimmynge above, hee was condemned as
fowle of the crime; as is written in the auld lawes of
the Brittones. *Verb. Ordalium*. And be *Cuiac. lib. 2. de
seuud*, *Purgatio vulgaris* is discharged be the Cannon Law.

Purgatio
vulgaris.

*et dilecti. Extr. de purgatione vulgaris. c. ex traitem. S. de
purgat. canonica.* And likewaies, be the lawes of this
Realme it is forbidden as unleasum. *Aff. reg. David. c. Stat.
etiam. 30. In fine ubi professam, lege aquam. Stat. Alex. c.
Stat. Dom. 6.* And be the law of God it is commanded,
that nane shuld suffer their sonne or dauchter to go throu
the fire, *Deut. 18. 10.*

Maneleta, ane kinde of evill and Pestilent herbe,
quhilke growes amangst the cornes, called *Guld. de
Indic. c. 7.* The Law of *maneleta*, or of the *Guld*, was
first institute be King *Kenneth*, quha ordained that hee
quha throu his fault or negligence, suffers sawen lands to
be flied with noysome herbes: For the first fault, fall pay
ane Oxe: For the second fault, ten Oxen: and for the
third fault, salbe remooved fra the possestion and labouring
of the lande. *Hector Boetius. lib. 10.* And gif ane
mailer or tennent, filis the land with *guld*, and will not
clenge the samin; hee may be punished as ane seducer,
quha bringis or convoyis ane armie within his Maisters
land, to wrack and destroy it. *Leg. Forst. cap. Si nationis
28. de Indic. c. 6.* And gif thy awin native man, or bond-
man

man (*natus sum*) hes guld within thy land: for ilk stocke or plantd thereof, hee suld paye ane Mutton, as ane unlaw. *Leg. Forest. d. c. 28. de Indic. cap. 27.* The quihilk Lawe and constitution is keiped and observed within certaine partes of this Realme; quhair the tennient sufferand the Gulde to grow amangst his Cornes, payis ane Weder or Scheip to his Maister.

Manerium, landes laboured with hand warke, *Quaest manurium in manu.* Ane mainnes, or domaine landes: Or *terra dominicale*: Because they are laboured and inhabited be the Lorde, and proprietar of the samin. Gif there be twa mainnes perteyning to ony man that is deceasid: The principall maines suld not be divided, bot suld remaine with his aise and successour, without division: to giddre with the principal messuage. And full satisfaction suld be maid to his wife, or relift therefore, foorth of the seconde mainnes, or vtherwise. *lib. 2. c. Dos autem. 19. de Indio. 112.*

Mansus, *A manendo*, ane habitation or dwelling place, speciallie quhair husband-men, labourers of the grounde, dwelis a landwart: to the effect they may labour their land mair commodiously. *L. Siplures. Nu. 9. C. de condit. insertis. Molinans in Stil. cur. part. 3. c. 85.* Bot *Bartol. in l. Si ita. Nu. 10. de Aur. argent. legat. affirmis*, ane Manse to be als meikle land, as may be gudly tilled be twa oxen in the zeir. *Cuiac. li. 1. de fendo. writtiis, that Mansus*, is sa meikle land, quhaitby ane man may susteine honestly himselfe and his familie, and pay the dewtie to his Maister, quihilk is called *Harenum*. Bot in the practique of this realme, it is rather called *Gleba*: That is, ane certaine portion of arable lande. In Latine *Terra culta*, Or *terra, veluti nativi venditi cum gleba, b. e. terra. Qui nativi a scriptis vocantur. l. 2. c. pluribus. 14.* And the four aickers of Lande, quihilk is graunted to the Ministers of the Evangel, within this Land, is called ane gleebe, the quihilk suld be free fra payment of ony teinds. *Ia. 6. p. 5. c. 62.*

De verborum significatione.

And *Carolus Magnus*, to the effect that the Ministers of the word of God suld not perish be hunger or povertie, gave to ilke Kirke ane mansie. For the quhilk they suld paye na dewtie or service. *Cuiac. Lib. 1. de Feud.*

Manus Mortua, dimittere terras ad manus mortuam, hoc est, ad multitudinem sive universitatem, que nunquam moritur. Quhilk utherwaies is called *Mortificare terras*: That is, to give and dispone lands, to the hande or power of the Kirke, College, Communite, or ony Vniversitie, capable to posseede, bruik, or joyes gudes or landes: The quhilk is said, *per avocacionem seu a contrario sensu*. Because sikh Kirks, Colleges, Communities, or Vniversitieis dois nocht dte: albeit the particular members thereof ar mortall, alters, and deceasit. *Ius Normand. Lib. 5. c. 7.* Quhilk is conforme to *L. Proponebatur. 76. ff. de judicis.* Swa *Manus* may signifie power, as in the Latine tonge. Or *Manus mortua*, may bee conforme to the Scottish word, borrowed fra the Dutch word *Meinzie*, quhilk signifies ane multitude, & speciallie of folke and people. And swa *dimittere terras ad manus mortuam*, is to give Landes to ony Vniversitie, and multitude of people. Alwaies it is not leasum to ony man to mortifie ony parte of his landes to the Kirk, without consent of the King. *Lib. 2. c. Notandum. 26.* Because the King may bee thereby prejudged in his tennendrie, dewtie and service, fra the quhilk the Kirk-men in auld time were exceded.

Meinzie.

Dram.

Solidus.
Libra.

Mark, In tractu d: ponderibus & mensuris, signifies aucht ounce weicht, or halfe ane pound, quhairot the dram is the aucht part. Like as the ounce is the aucht part of ane marke. *Cheffa. in Consuetud. Burgund. Rub. 1. Sect. 7. Verb. 65. folz Turnoys: solidus, inquit, in jure capitul pro aureo. quorum. 72. faciunt libram auri.* Et duodecim unciae faciunt Libram, & octo unciae marcam. *Gl. & Ia. Fabr. in Sect. nos autem. Verb. sol. dos. in fol. de attil. tiro.*

Marcheta, King *Eowinus* did wickedly ordaine, that the Lorde or Maister of the ground, or Land, suld have the first

first nicht of ilk maried woman within the famin. The quihilk ordinance, was after abrogate be King *Malcolme the Third*; quha ordained, that the Bride-groome shuld have the use of his awne wife. And therfore shuld paye ane peece of money, called *Marca*. *Hector Boetius, Lib. 3. c. 12.* For the quihilk, certayne Kye was used to be payed. *ibid. 4. cap. Scindum 63.* Bot utherwaies in my opinion, *Marke*, or *Marche*, signifies ane horse. In the auld French, Irish, and Dutch tonges. For in the French tongue, *Marcher*, is to ride or gang; as *Marcher Devant*, to ride or gange before. And *Paulus Diaconus Histor. Longobard* writis, that *Mar* is called in Latine, *Eqna*, quihilk wee call ane *Meare*. *Alciatus de singulare certamine. c. 32.* *Marcam, in-
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bodus Rex Marcomannorum, cui corpus instar equi erat.* Mair-over, I finde ane aulde constitution, written be *Lo-
tharinus Imperator, & Carolus Rex*, in this manner: *Vt
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ali quilibet, vicinos suos maiores, vel minores, tempore afa-
tis, quando ad herbam suos caballos mittunt; vel tempore
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dantur, aut opprimant.* Be the quihilk it is manifest, that *Fodrum*, *fodrum* is a Dutch word, *pro pabulo equorum*, quhilke wee *Marchalcus*, call *fodder*, and *Marchalcus* or *Marescallus*, is a maister of stalle, or a servand that hes cure of the Horse; for *March* signifies ane Horse, and *Schalk* in Dutche, is ane servande, as *Godschalke*, the servant of God. And *Alciatus. de. c. 32.* Affirmis that the troupes of Horse-men, in the armie of *Brennus*, was called *Trimarchisia*, because ilke man had three horse. And in the famin signification, wee use the word, *Horse marschel*. Quhair horse is adjoyned, for interpretation of the worde *Marche*. As likewaies in *Silver-downs hill*: This word *Hill*, is the interpretation of the uther worde *Downe*, quhairof the ane and uther signifies ane

March

Schalk

Trimarchisia

Horsmarschall

Downe.

De verborum significatione.

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De verborum significacione.

ane thing, in Latine, *Mons.* Swa horf-marschel, is ane servand that keips or curis horse, as is commonly used within this realme. Quhilk opinion, sindry Germane writers confirmis, and specially the *Scholiaſtes* of *Gunterus, lib. 8. Aſtridios.* Swa leavand to ilke man his awin opinion and judgement free to himselfe: I thinke that *Marchettamulieris*, is the raide of the woman, or the first carnall copulation and conjunction with her, quhilk in respect of her virginitie, is maist esteemed be men. Quhilk interpretation is confirmed alſwa be *Cniac. Lib. c. defend.*

Maritagium Heredis. The mariage of ane aire maill or femail, quhilk is modified & liquidat be the Lordes of the Session, to ane certaine ſumme of money, after conſideration of the rental, and valure of the landes pertaining to the aire: quhilke is either legall, or conventionall. The mariage Legall, is that quhilk be the diſpoſition of the Law, perteinis to the ſuperior and Over-lord: For the mariage of ane aire maill or femail, of landes halden be ſervice of warde and relieve, being of leſſe age, or being of perſite age, & not maried the time of the deceaſe of his father, or uther predecessor, to quhom he is aire, perteinis to his im rediat ſuperior, be the commonon diſpoſition of the Law of this Realme. And gif there be maa ſuperiors, the mariage perteinis to the firſt, and eldeſt ſuperior, to quhom the predeceſſors of the ſaid aire, maid firſt leageance and lōnage: or of quhom they have the firſt infeſtment of their landes. *leg. forest. c. ſi al. cui 75.* Mairover gif an aire haldis certaine landes be ſervice of ward of the King immeadiately: and certaine uthet landes be the like manner of halding immeadiately of an uther ſuperior, Spiritual or Temporal, the mariage of the aire ſyld perteine to the King alaneſtly, without any reſpect of the quantity of the landes, or of the priority or poſterity of the halding: Because the King hes not ane peere or companion, ſar leſ ane ſuperior within his realme. *Lib. 2. c. Reſiſtare.*

The mariage perteinis to the eldeſt ſuperior.

The mariage perteinis to the King.

44. c. 45. *Maritagium conventionale*, is that quhilke cums not be disposition of the Law, bot be the convention and consent of parties, as quhen ony man haldis his lands in blench, or in few-ferme: His awin, or his aires mariage, na waiers thereby perteinis to his superiour: Bot zit gif he payis ony duty for his lands, *nomine alba firma*, or *nomine feudi firma*, *uno cum maritacio hereditis cum contigeris*: Gif he happenis to decease, the mariage of his aire, not being married, perteinis to his superior, not be the nature of the holding of his lands, bot be the convention and provision conteined in his instrument. The availe of ane aires mariage, is either single or double. For gif the superiour requiris not ane aire to marie, and the aire marie without his consent: The superiour suld obteine allanerie for his mariage, be the estimation of the ordinar Judge, sa meikle as may be ane competent summe, or tocher to the said aire, conforme to his zeirly rente: Or gif the aire refusis to marie, hee cannot be compelled to do the fainin: *Quia matrimonia debent esse libera*: Bot quhen he commis to perfite age, hee sal give to his superior, als meikle as hee might have fra ony uther person, for the same mariage, before hee receive his Lands out of the hands of his superior, *Quia maritagium ejus qui infra statem est, de mero jure pertinet ad dominum feudi leg. Forest. c. Si quis 66.* The double availe of the mariage of ane aire, perteinis to the superiour, quha makis ane lauchfull offer of ane party, to the aire in mariage. Providing that the partie offred, be of equal parage. For gif the superiour dois marie the aire, with ony person in disparsage, as with ane burgesse man, or with ane villaine: gif the aire be of the age of 14. zeires, or mair, & gives his consent to the said mariage, the fainin is gud and valiable of the law. Bot gif the aire be within the age of fourteene zeires, quhair throw he may nocht give ane lauchfull consent to his mariage. In that case, gif his kinsman compleinis, the Over lorde sal tine and omit the ward, and all commodity that he may have thereby, untill the aire bee of lauchfull age of twenty ane zeires: Quhilke salbe converted and employed, be the ficht of his friendes, to his use and commoditiie, be reason of the schame and dishonour done to him. *Leg. Forest. c. Si qui domini 65.* Quhilke is conforme to the lawes of England. *Hen. 3. stat. Merton. c. 6.c.7.* Swa gif the mariage of ony aire, or hererrix, be fallen in the superiours hands, and the aire beand lauchfully required be the superiour, or his donatar, or

Single and
double
availe of
marriage.

be ony cled with their richt, to marie ony agreeable partie without disparage offered to him, refusis to do the same, & maries ony uther person, without the licence and consent of the superior or his donatar; Hee aucht & fuld be reason of his contempt & disobedience, paye not onelic the singel availe of his mariage; bot also the double thereof: That is, als meikle againe, as the singel, be the modifac[i]on of the Judge, after the zeirly rental, availe, and quantity of the lands & livings, pertaining to the aire. And mair-over, in this case, be the auld law of this Realme, it is leasum to the superior, to hold and retaine the lands, albeit the aire be of twenty anc zeires of age, untill he be compleitly satisfied of the said doube availc. *Leg. Forest. c. de heredibus. 64.* And it is to wit, that the said requisition fuld be maid in this maner. The superior his donatar, or the assignay maid & constitute be the Donatar, or ony uther person, havand richt thereto, aucht & fuld be himselfe, or be his lauchfull procuratour, havand special power in writ, to that effect, offer to the aire, personaliy apprehe[n]ded, then being of lauchfull age for marriage, ane agreeable partie, expreemand the said persones name, & sur-name, without disparage to him; Sick-like beand of lauchfull age, and convenient for mariage, & require the said aire to solemnizate, & compleit the band of matrimonie, in face of halie Kirk, with the person that is offered. And for compleiting thereof, assigne and affixe ane lauchfull daye: To wit, the space of threttie dayes at the least to him to compleit the samin within ony Kirk appoynted be the maker of the offer to that effect. And in the meane time of the said requisition, or after the samin, the donatar, or ony uther assignay, havand richt & title of him or of the superior (for the superior himselfe, needis not to make ony intimation of his richt and title, he beand noisourly knawin to be superior) fuld make be himselfe, or be his procuratour, intimation of the richt & disposition maid to him, & schaw the same, and make the same patent, in presence of the said aire, & cause the samin to be read before him, or give or offer him ane copie thercof: To the effect that he thereafter may not pretend nor alleage ignorance there anent. And therafter the said person, *viz.* The superior, or ony uther cled with his richt, be quhom, or in quhais name the said requisition and intimation was maid, aucht and fuld personally, or be his procuratour, compeirat the day, and Kirke appointed of before: Bring and with him the said partie offered, in proper person, reddie and willing to marie,

The forme
how ane
aire fuld
bee requi-
red to
marie.

rie, qua was offered in mariage: And therin lauchfull time before twelve houres of the day, offer him ready to accomplish and fulfill that quhilke he offered, and required to be done of before. And to that effect, there remaine quhill the Sermon, or divine service be done, or quhil an houre after noone. And gif the aire compeiris noct, or compeiris and refusis to marie, he sulde take instrumentes thereupon, in the hands of ane sufficient Notar, of the refuse maid be the aire, or of his non compearance: and the offer of the agreeable partie, togidder with the intimation foresaid, quhilk cannot be proven be witnesse, bot be writ. *Pen. Feb. 1567. The Laird of Dumlangrig, contrair Marion Carrutheris. 21. Junij. 1568. William, Lord Forbesse, contrair the Laird of Boyne. 4. Junij 1575. The Lairde of Glenbervie, contrair the Laird of Vany.*

Maritagium, Tocher gud. Lib. 2. c. dos autem 19. in fine. c. potest. 21. cum seqq. vid. Dos.

Marus, Ane officiar, or executour of summondes. Iam. 1. parlia. 9. cap. 111. parla. 13. c. 140. Vide Recordum. He is utherwaies called, Praeo regis Lib. 2. cap. cum autem. 8. Quhair it is said, Quod die dominico vox praconis effare debet, because na summondes suld be execute upon ane Sunday. The Kings Maire is of ane greater power and authoritie, nor the messengers or officiars of armes, and especially in Justice aires, and punishing of trespassors. Bot now the said office is given in fee and heritage to Maires of fee, quha knawis noct their office: Bot ar idle persons and onely dois diligence in taking up of their fees, from them to quhom they doe na gud, nor service to the King.

*Matertera, properly is the Mother siste, Quasi Mater altera. Bot sum-times improperly it is taken for the Father sister, in Latine *Amita*. For lib. 2. c. *Deficientibus* 34. *Post Avunculum. b. e. patrum, ejusque liberos, Matertera ejusque liberi habent ius successionis.* And be the Law of this Realme, the bairnes descendand of the mother-sister, hes na richt of succession: Quhilke in the awin place and degree, is competent to the bairnes borne of the Father sister; quhilk is manifest. *De judicib. c. heredum. 113. c. Items Nota 115. Vbi expresse, Matertera dicitur esse Amita. Vid. Avunculus.**

Mellerum, Medletum. lib. 1. c. 2. Ane French word, Melle, diffension, strife, debate, as we saye, that ane hes melled or tuilized with ane vther. And in the actes of Parliament, and practic-

De verborum significacione.

que of this Realme, *Chaud-melle*, is ane fault or trespass, quihilk is committed be ane hoate suddainy, and not of set purpose, or *pracogitata malitia. Ia. 1. 3. Mar. c. 51.* And in *Libro M. Wilhelmi Skenai fratri mei, Commissarii Sancti Andre. Fol. 121.* It is written, that *Flycht-vyt*, is liberty to hald courts, and take up the *unlaw pro melleis*. Because *Flycht*, is called flying; In French, *melle*, quihilk sometimes is conjoyned with hand-strikes. And in summe buikes *Placitum de melleis*, is called the *Mute*, or pley of *beating* or *striking*. *lib. 1. c. 2.*

Menetum, leg. Forest. c. 2. Ane stock-horne. In the quihilk place, it is wranguously written *Cornuare minutum, pro cornuare menetum*, to blaw ane stock-horne, quihilk commonly is maid of Timmer and wood, or tree, with circles and girds of the same, quihilk is set used in the Hie-landes and Iles of this Realme; quhairof I have seene the like in the cuntrie of *Helvetia*, in the zeir of God, 1568. amongst the *Zpitlers*.

Meremium, Muremium, The cimmer of ane house. *lib. 4. 7.* *Si quis 55.* In the English laws, *Carta de Foresta*. It is called *maremum*. And ane charter given be *Jacobus Senescallus Scotiae* (King James the First, before his Fathers decease) To *Thomas Browster*, of the landes of *Sacerland*, beside *Paffay*, nowe perteining heretably, to *Matthew Steward of Barcubbe*, conteiniſſ potestatiſſ incidentiſſ meremium: that is, licence and power to cutte ſa meikle greene woodde in the Kingis Forest of Rife, as fuld be neceſſar to the ſaid *Thomas*, to bigge houses to his awne uſe.

Mefe Of herring, conteiniſſ five hundreth: For the common uſe of numeration and telling of herring, be reaſon of their great inuolitudo, is uſed be thousands: And therefore ane Mefe comprehendis five hundreth, quihilk is the halfe of ane thousand. From the Greek word *μεσον* in Latine *medium*.

Messuagium, lib. 2. c. Dos autem 19. c. Si quis plures 30. cum ſeqq. ane principall dwelling place, or house within ane Barronne, quihilke in the Lawes of England, is called *Mannour*, ane Hall, Place, or Courcludge, or *Mannour house*. Albeit *Valentine Leigh*, in his buik of Surveying of lands, affirmitis *messuagium* to be the tenement or lands arable. And the dwelling house or place, or Courte-hall thereof, to be called *Sit*, from the Latine *Situs*: quihilk we call the ſeate, or on-lette. And it is not leaſum to give the principall messuage, to the wife within burgh, in life-rent. *Leg. Burg. c. Null. Ius. 107.* *Milites,*

Malites, Leg. Mal. Mak. c. 2. And generally, in the auld Lawes of this Realm, are called free-halders, haldand their lands of Barronnes in chiefe; quha hes na power to hald courts of life and lim: bot onely of injuries, wrang, and unlaw. Bot *militare Servitium* *Knichtes service*, is that manner of halding of lands, *militare*. quhilk is called, service of ward and relieve. *Et miles opponitur Soccomanno*, and he quha haldis his landes, *Per militare servitium*. lib. 2. c. Si quis 30.

Misericordia, ane merciment, amerciament or unlaw. *Leg. Forest. c. 5 de jndic. c. 40. Misericordia domini regis*, or the Kingis merciment in purpresture. *Lib. 2. c. vid. Foris factum dicitur. 75. vid. Americamentum.*

More, Mute, pley, action, quarrell. Quhen King *Malcom* the 2. gave aill his lands to the Barronnes of this Realme: hee reteined to himselfe *montem placiti de Scona*, The mute-hill of *Scone*, quhair he micht hald his borts and do justice to his subiectes, in deciding their pleyes, and controyersies. *Leg. Mal. Mak. inprin.* Mute in the lawes of this realme is called *Placitum*. And like as in the civil law, actions ar divided in civil and criminall: *Swa placitorum, aliud est civile, aliud criminale.* Playes ar civil or criminal: Civill ar called *actiones of iniurias, wrang, and unlaw, leg. Mal. Mak. c. 2.* And concernis pecuniall paines, or lands and heretage. Criminall pleyes, touchis life or lim, or capittal paines, called *paena sanguinis*. *lib. 1. c. 2. c. 3.*

Mort-gage, mortuum vadum, dicisur pignus, cuius fructus, vel redditus percepti, in nullo se acquietant. It is ane French worde, signifies ane dead wed; sick as ane certaine summe of silver, given upon lands in wed-set, and under reversion: quhilk is called ane dead-wed: Because be the auld law of this Realme, the profit thereof, that is, the annuall of the silver, is reckened as ane parte of the stocke and principall summe; And therefore the said stocke is dead, without ony profite, as ane barren and dead tree, quhilk producis na fruit, *lib. 3. c. 4. c. 6.* Contrair the common forme of alienation of lands, under reversion, daily used within this Realme, called *pactum de retro-vendendo*, quhair be the annuel is zeirly payed, untill the redemption of the lands. At the quhilk time, the principall summe suld be likewaies completly payed. And swa baith the annuell, and the stocke being payed, the profits are not reckened in the stocke, bot ilke ane of them are severally reckened, and severally payed, sa meikle for the profite,

De verborum significacione.

and sa meikle for the principall summe. *Vide vadum.*

Mulierarus Filius, is ane lauchfull sonne, gotten with ane lauchfull wife. *Lib. 2. c. Si autem 22. Ex legitima muliere seu uxore, quia mulieris appellatione vxor continetur. L. Mulieris. 13. & ibi Gl. de verb. signif.*

Murthram, *Lib. 1. c. 2. lib. 4. c. 7. Quhairof sum* is called private, that is, mans slauchter, quhairof the author is unknawin; quhairof the inquisition perteinis to the Crowner; As quhen ane person is found slaine, or drowned, in ony place or water. Vther is publick, committed be forethocht-fellonie, *Quia non debet murthrum adjudicari, ubi infortunium intervenit: sed locum habeat murthrum, in interfictis per feloniam.* And swa murther is committed be fore-thocht-felonie, and not be fuddaintie, *Chaud-mella*, or *infortunum*: That is, be chaunce or fortune. *Leg. Mal. Mak. cap. 2.* And in the laws of England. *Anno. 1. 3. Edw. 2. c. 1.* Murther is quhen ony man be anc propensed malice, lyis in waite to slay ane uther. And according to his malicious intent slayis him. *Molineus in styl. Cur. Parl. part. 1. c. 13.* Conforme to the law of Normandy, *lib. 12. c. 1.* Affirmis, that murther is different from simple slauchter: Because murther is committed wittingly and willingly, be ane quha of set purpose lyis quietly in awaite for that effect. And slauchter is committed without ony fore-thought-fellony, upon ane haiftie suddainty, quhilk in Latine is *Rixa*. And in French, *Chaud-mella*, in the quhilk place he wrritis, that three crimes perteinis to the high Justice: Wilfull-fire, ravishing of weemen, and murther. Bot be the law of this Realme, fourre crimes are called the four poyntes of the Crowne: Wilfull-fire, ravishing of weemen, murther, and robberie or riefe: because the Iurisdiction, or cognition thereof, perteinis allanerly to the King, and to na subiect Spirituall nor Temporall, except the samin be specially granted to him be the King. *lib. 1. c. 2. leg. Mal. Mak. c. 4. lib. 4. c. Dei luna. 13. ass. reg. Da. c. 1.*

N.

NAMARE, *Namis capere*, to take ane poynd, or ane distresse. It is ane auld Saxon word. For *Naman*, in Latine *Pignorari sive pignus auferre*. And *Namatio*, signifies the taking of

of ane poisd. *leg. Brittonum. verb. Pignorari.* In the Law of Normandy, *Nam* commonly signifies ony gudes or geare moveable or unmoveable, taken for execution of ane decret, *Pignora capta, & bona capta pignori. ut in L. à Divo Pio. 15. ff. de rejudicatur.* Be the Lawes of this Realme, na poyd fuld bee taken, bot for ane confessed or proven debt. And the samin fuld be publickly schawin, and maid manifest to all passengers be the way, and to all parties following the samin. *lib. 4. c. Si quis namos 30. cum scgg.* Na man may poynde within ane uther mannis boundes or iurisdiction, bot for debt auchtand to him, except the Kings Baillie be present. The poyd or distresse, fuld be oonforme to the quantity and valure of the debt. Naperson may be poynded, bot the debtor, or his sovertie or plegde. The poyd fuld remaine within the samin Barronnie, quhair it is taken, in ane place pertaining to him, quha takis the samin, or at the least, in the nextt adiacent barronnie, within the samin Schireffedome, and not in Fortalices or Castelles. *Stat. 2. Rob. Br. c. Item ordinatum 8. Curia de namo vetito.* That is, of deforcement, be the auld Law perteinis to the King allanerly. *de Maritag. c. Scindum. 17.*

* *Nativi, Borne slaves or servandes, vide Bondagium.*

None-entres. Is quhen ane vassall, vest and saised in the fee and propertie of the Landes deceasis, leavand behind him ane aire, quha beand of lauchfull age, may enter to the lands, be taking of saising thereof, and zit enters nocht. In the quhilk case, the Landes are in the handes & power of the immediate superiour, be reason of none-entresse, *Propter negligentiam heredis, jus suum non prosequentis.* *Stat. Rob. 3. cap. Nota. 21.* Mair-over, there is *Twa* twa kindes of *None-entresse*: The ane simple, nocht followand kindes of after ane warde, in the quhilk, the superiour of the Landes, un- *none-ent* till they be declared be decree of ane Ordinar Judge, to be in *tresc.* *None-entresc,* fuld have allanerlie the retoured maill thereof, conforme to the newe extent. And after the declaratour, the superiour may remoove the tennentes, or occupie the landes as he pleasis, induring the time of the *None-entresse.* The uther kinde of *None-entresse*, is that quhilk followis after ane warde: As quhen lands ar halden be service of warde and relieve; and the aire is *Minor*, and may nocht enter: The samin Landes perteinis to the superiour, be reason of ward, and nocht of *None-entresse.* For quhair there is warde, there is na *None-entresse*, be reason the warde, so lang as it induris, stoppis the *None-entresse*,

Bot quhen the warde expyris, togidder with the twa tearmes of the relieve; The none-entresse beginnis, gif the aire beand of perfite age, enteris nocht to the Landes, and obteinis saising thereof. The quhilke None-entresse, requiris na declaratour, bot is of the like nature, with the ward preceidand. And induring the time thereof, the zeirlie mailles and dewties of the Landes, as they give be tache and assedation, perteinis to the superiour; or he may remoove the tennentes and possesouers therefra, and occupie the samin as he pleases: like as he mycht doe in the time of the warde. Mait-over, this kind of None-entresse, beand given and disponed be the King, or uther superiour, to the appearand aire himselfe, or to ony uther person, is sufficient and valiable to the donatar, for all zeires and termes preceeding the gift and disposition, and three tearmes after the perfite age of the aire attanerlie. And endis and ceasis after the ischue and outrunning of the saidis three tearmes. And gif the aire enters nocht within the said space: It is leasum to the King, or uther superiour, to dispone of new the faide none-entresse to quhom he pleasis, to be used be him, unto the entrie of the lauchfull aire; as was decerned and ordained be the Lordes and Auditouies of the Checker, in the Moneth of Julii. 1596. And conforme thereto, decided be the Lordes of the Section. 9. Julii. 1597. The Laird of Capringtoun, contrair the Laird of Hesilhead, quhilke is not disconforme to the Lawes of the fewes, quhairbe the aire of the vassall, not desirand investiture, or possession fra his superiour, within zeir and daye, after the decease of the vassall his predecessor, tiris and forefaltis his few, and the samin perteinis to his superiour. *Sect. 1. Et ibi. Gl. quo temp. miles investitur, petere debent. lib. 1. de feud.*

Nova Diffasina, recent spuizie or election. vid. Diffasina.

OCHIERN, Ogetharius, Is ane name of dignitie, and of ane free-halder. *Stat. Alex. c. recordatio 26.* and appeiris to be of equall honour and preheminence with the sonne or daughter of ane Thane, quha baith hes the like *marcheta* *viz.* twa Kids, or twelve pennies. *Lib. 4. c. sciendum 63.* And likewise the *Cro* of ane Thane, and of ane Ochiern is foure Kye. *Lib. 4. c.*

4. c. statutis. 64. And unlaw quhilke the King may take fra ane Thane, is fixe Kye, and from ane Ochiern, fiftene Schep, or fixe schillings. *Aff. reg. Da. c. recordario. 17.*

ORA, ane auld Saxon word, and signifies mettall, six as brassie or golde: And mairover, in ald times it was ane peice of cunzied silver or gold. For *tres ora aurea*, are the pris of ane Cowe. *Lib. 4. c. sciendum 63.* From this comes the word *zit* commonly used, *Vre*, as leid *Vre*: And in the Garviach, with in the Schireffe-dome of *Aberdene*, there is one hill called *Dounyndure, montriculus metalli*: and the scheep there pastured, has their teeth couloured with zeallowe coulour, quhilke is ane taken of abundance of mettall.

ORIGELLVM quasi *anrigellum*, ane Habergion, made of mailzies, quhairof the edges are of mailzies of zellow coulour, resembrand the coulour of gold or brassie. *Star. 2. Rob. Br. c. ordinatum 27.* quhair it is called *Habergellum*, vid. *Hambert.*

Out-fang-thieve, vid. *In-fang-thieve*.

P.

PANNAGIVM Porcorum, ane French word, signifies the duty of quhilke is given to the King, for the pastorage of Swine in his Forrests, *Leg. Forest. c. 5. 6. 8.* As is manifest in the lawes of England, in the Chartour of Forrests, quhair *Pannage* is called ane certaine summe of silver, quhilke the awner of ane Parke, or offsome great wooded, quhair-in their is greate store and abundance of Maste, Aike, Beitche, or vther trees, vñis to take of his tennents, or vthers for their Swine, that fall feede there, betuixt Michael mas and Martine. mes. Item, pannagium signifies ane pair of the kings demaine, or propertie, given to his second, or vther zounger sonne, or cousin, quhairof Chappinus writes, *de domando regis Francia*. But hereof no mention is maid in the lawes of this realme.

Particata. Uerperticata terre. From the French word *perche*, meikle ysed in the English lawes, ane ruid of land. *Leg. burg. 1. 1. 1. particata 140. Star. Wilb. c. perticata 13. Quon attach. c. de brevibus 31.* It is of verity, that three beare cornes without tayles, set togidder iulength, makis ane inche. Of the quhilke cornes, ane suld be taken off the mid. rig, and off the side of the

rig, and ane off the furrow. Twelue inches makis ane fute of measure: Three fute and ane inche, makis ane Elne: Sex elnes lang, makis ane Pall: quhilk is the common lineall measure and mette. And sexe elnes lang, and sex elnes broad, makis ane squair and superficiall fall of measured land, and it is to be understand; that ane ^{yd} and ane ralp, ane lineall fall of measure, are all ane, and signifies ane thing; for ilk ane of them containis sex elnes in length, albeit, ane rod is ane staffe, or gade of timber, quhairwith land is measured, in Latine, *perica*. An ralp is maid of towe, sik as hempe, or vther stoffe, and sa meikle lande, as in measuring fallis vnder the rod; or ralp, in length is called ane fall of measure, or ane lineall fall, because it is the measure of the line, and length allanerly. Like as the superficiall fall is the measure, baith of the length and the bredth, *Quia linea est mensura solius longitudinis, superficies vero est mensura longitudinis & latitudinis*. Item, ten fallis in length, and four in bredth makis ane ruid: four ruid makis ane aiker. And swa ane discreet and true man, may measur ilk aiker of land, lang or schort with rod or ralp, be the measure of the fall: Swa that he keepe iust count and gud remembrance, that the endes of the rod or ralp be richtly and even layde, without fraude or guyle. But it is necessar, that the measurers of land, called Landimers, in Latine, *Agrimensores*, obserue and keepe ane iuste relation, betuix the length and the bredth of the measures, quhilk they vse in measuring of Landes, quhair- anent I finde na mention in the Lawes and Register of this Realme; albeit an ordinance theranent be maid be king Edward the first, king of England, the 33. yeir of his reigne: and because the knawledge of this matter is very necessarie, in measuring of Landes, dayly vsed in this realme: I thought gud to propone certaine questioines, to John Napier, feare of Merchistoun, ane Gentle- man of singular iudgement and learning, specially in Mathematicque sciences. The tenour quhairof, and his aunswers mad thereto followis.

Length
and bredth
of the fall.

Firft, be quhat rule fall we ynderstand the length and bredth of the fall? It is answered: There is twa sortes of fallis; the ane lineall, the vther superficiall: The lineall fall, is ane met- wand, rod, or ralp, of sex elnes lang, quhairbe, length and bredth are severally met. Ane superficiall fall of Lande, is sa meikle boundes of landes, as squairly containis ane lineall fall of bredth, and ane lineall fall of length, quhairof followis, that be the lineall fall,

Rod
Raip
Fall lineal
and super-
ficiall.

Landimers
Agrimen-
sores.

fall, lande is measured: and be the superficiall fall, land is reckned. Now quhair it is inquired be quhat rule the length and breddh of ane fall fall be vnderstande. I aunswere, That quhen so ever the elnes of breddh being multiplied be the elnes of length, do produce 36. elnes the number product, is ane superficiall fall: and the saide breddh and length, are the iuste breddh and length that makis ane fall. Swa threttie sex elnes lang, of ane elne brode, are ane fall of land. Item, auchteene elnes lang, twa elnes broade are the like: Alswa, twelue elnes lang, or three elnes broad, or nine elnes lang, of four elnes broad, ar the fall. Lastly, sex elnes alwaies, that is to saye, sex elnes lang, and sex elnes broad, makis ane fal. To this fall, the little ruid, or ruid of warke, or of buirds, or of maison, or sklait warke, is equall, quhilk is maist properly the ruid, as after followis. Secondly, how mony kindes of ruidis ar in use? Answer: Twa, quhairof the an is proper, the vther improper. The ruid properly, is an superficial fall, and conteiniſ 36 sex square elnes: Anſ square elne, being the bounds of ane elne in breadth, and ane elne in length squarely inclused. The vther vulgare and improper ruid of land, conteiniſ fourtie of thir former ruides, or superficial fallis, and is the quarter of ane Aiker of Lande, because foure of thir ruides makis ane aiker, as said is.

Thirdly, be quhat rule may the iuste measure of ane aiker in length and breadth be vnderstand? It is answered. Multiply be Arithmetick multiplication, the number of the fallis that are in the length of the land, be the number of the fallis that ar in the length of the land, be the number of fallis that ar in the breadth thereof: Every aucht-score fallis of the number produced, and resulting of the said multiplication, is ane aiker: and therfore aucht-score fallis of length, and ane fall of breddh, makis ane aiker: and four-score fallis of length, and twa fallis of breddh, makis ane aiker. Item, fourty fallis of length, and four fallis in breddh makis ane aiker. Alswa, twentie fallis in length, and aucht fallis in breddh, makis ane aiker. Lastly, ten fallis in breddh, and sexteene fallis in length makis ane aiker.

Length &
breddh of
ane aiker

Fourthly, seeing there is ane kind of mesuring of land be rod of meau- and raipe: quhat is the forme therof? And gif there be ony maner of formes, how are they called? and quhat is the forme, and maner of the samin? It is answered: There be knawin too expertise Mathematicians, mony and diverse waies to mette lande, all

The maner
landes be
rod or
ripe.

agree and togidder in ane, but of the vulgar people there is but ane forme of metting vsed and vnderstand: to wit, be rod and raipe, that is to say, be ane rod or gade of sex elnes lang: Or be ane string or coard, of sex elnes lang, strected betuixt twa staves. The cord being ane schaft length abone the pykes, or nether endes of the staves. The said rod or raipe, or either of them, is called ane fall: to wit, the lineall fall foresaid. With these fallis, ilke square peece of land, is met over the middis, quhat fallis and elnes it hes of length, and therafter is met croce, ouer the middis, quhat fallis and elnes it hes of bredth. Therafter the fallis and elnes of the lengh on the ane pairt, and the fallis and elnes of the bredth, on the vther parte, are multiplyed togidder, and the product schawis the number of the aikers, ruides elnes. quhilk the said peece of land conteiniſſ. As for example, gif the peece of land be 51. fal, three elnes of length, and 10. fallis, 2. elnes of bredth: multiply 51. fallis, 3. elnes, on 51. fallis to be 10 fallis, 2. elnes, or to be 10. fallis: The product wil amount to 532. fallis: or 532. fallis, 6. elnes: quhairof every acht score fallis ar ane aiker. Swa 532. fallis 6. elnes, are three aikers and ane quarter, 12. fallis, and 6. elnes of mett land.

P A T R I A, *Affisa, vel recognitio per affisam*; Ane affise or inqueste of cuntrie-men, quhilk is called *recognitio patria*. Lib. 3. cap. cum autem. 6. vid. *Bonapatria*.

P E D E L L V S, *Leg. Burg. c. citatio*. 109. The Serjand or Beddle of the burgh, quha fuld execute summondes: make attachments, or take poindes. *Quon. attach. c. nullus* 57. Quhairof they haue na power, without their awin jurisdiction. *Affreg. David. c. nullus* 14. *Dicitur autem pedellus a pedo: hoc est, baculo*, because all sik ferjandes fuld vſe ane wand, staffe, or halbert. *Iam. 1. p. 6. c. 99.* *No siltis aost mundus in*

P E D E -p u l v e r o f u s, ane French word, *pied. pulvrenus*, dustie fute, or an vagabond, speciallie ane merchand or creamer, quha hes na certain dwelling place, quhair the dust may be dicht fra his feete or schone, *De Maritac. c. si quis 9. leg. Burg. c. si burgensis 14. deindeo. c. 4. 7.* To quhom Justice fuld be summarilie ministred within three flowinges and ebbings of the sea. Ane pedder, is called an merchand, or creamer, quha bearis ane pack or creame vpon his back, quha are called beirares of the puddill be the *Scottesmen* of the realme of *polonia*, quhairof I saw ane great.

great multitude in the Towne of Cracowia. anno. Dom.
1569.

P E N S I O N, ane dewtie, sik as ane annuel-rent: For that quhilk in the act of Parliament. Iam. 2. p. 11. cap. 41. Is called the pension of *Cadzow*: In the Checker rolles is called the annuel rent of *Gadzow*. And siklike in the saimen place mention is maid of the pension of the ferme meil of *Kirk-patrik*, quhilk conteiniſſis five chalder of ait-meill, quhilk the Abbot and convent of *paſſlay* payis zeirly foorth of the Kirk of *Kirk-patrik*, to the king, as ane pairt of his annexed propertie, as is manifest in the Schireffe rolles of the Checker of King Ia. 3. 1487. In *libris fendorum*, *Soldata* is ane zeirly free gift and donation, induring the life time of the giuer, and is swa called, *a ſolido, qua plerumque in ſolidorum donatione conſiſtit. ſett. 1. quis dieatur marcia, lib. 3. de fendo.*

Pension of
Cadzow.
Pension of
Kirk Path.

Soldata

P L A C I T V M, From the French word, *plaider*, pleyn, contention, strife, or debate. *placitare, significat litigare & causas agere. Molinaus in fil. suprem. cur. Par. part. 1. c. 6. part. 2. c. 3. Et D. Smith. lib. 2. 6. 10. of the common weill of England. Vid Mote placita corone, pleyes, or criminall actiones perteyning to the Kingis Crowne and iurisdiction allanerlie, or to his Iustice generally, quhilkis are foure in number: Robberie, or riefe: Raufishing or deforcing of weemen; Murther, and wilfullfire, sik as burning of houses wilfullie, and malitiouslie. vid Murtherm. Quhairof, or of onie ane of them, gif ony happenis to be convict, all his gudes perteiniſſis to the king allanerly, in the saimin maner, as is ſtatute of the gudes of, traytoures. Leg. Mal Mak, cap. 3.*

Pleyes of
the
Crowne.

P L E G I V S, ane pledge, borgh, or cautioner, *dimitere terras ad plegium*, To let landes, to borgh, is quhen ony controverſie, being for the poffeffion of landes, the ſaimin after inquisition and tryall taken there anent, given and committed to the laſt lauchfull poffeffour of the ſaimin landes, vnder borgh and caution, that he ſhall restore the ſaimin to him, puha ſhall be fououd to haue richt thereto. Ia. 2. p. 14. c. 26; Or quhen twa perſones contendis be way of deede and armes, for the poffeffion of one landes: The ſuperior therof may recognoce, or take to himſelfe the poffeffion of the landes, vntil it be tryed quha was laſt lauchfull poffeffour therof: And then let the landes to him to borgh, and vnder caution, as ſaid is. *Stat. Rob. 3.c. Nota. 21. Certaine*

taine cornes growand vpon debatable landes, betuixt the L. Ruthven, & the L. of Copemalindie, be decreee of the Lords, ar lattin to borgh to the said Lard, he findand caution that the samin salbe furth-cummand to them, quha recoveris the samin be law, without prejudice of the richt of onie of the parties their anent in time cumming. And like as the Over-lord, or iudg for the causes forefaid, lettis landes to borgh, to the possesseour therof, the tennent or possesseour, *petit terras dimitti ad plegium*, desires the landes to be letten to him to borgh, or under caution.

Stat. Rob. 3. c. 4.

P O R T E O V S, portuis. Ia. 1. p. 13. c. 139. Ia. 2. p. 1 4. c. 99. Ia. 5. p. 3. c. 5. *A portando*, quhilk signifies to carie, or beare: In French *portes vous*, and signifies ane catalogue, conteynand the names of the personnes indited to the justice air, quhilk is given and delivered be the justice clerke to the Crowner, to be attached and arreifted be him, to compeir and answer to sik accusations and crimes, as salbe impute unto them, & the porteous conteynis the names of them quha ar of new indited, and the names of them quha were indited of auld and of before, and compeir not: And quhen ony justice aire is criid or proclaimed, commandis given be the justice to warne al persons, asweil indited of auld, as of new, to compeir in the said aire, to underly the law. The crowner receivis the porteous, as said is, and caries the samin with him, vntill the attachments and arreiftments be maid, conform thereto, and reportes the samin againe to the Iustice court: That therby he may be controlled in execution of his office, sa far as concernes the making of attachments and arreiftments or probation theirof.

P O S T N A T V S filius, ane second sonne, narrest to the first begotten, conforme to the French word, *le plus aise*. *lib. 2. c. 5. ergo. 23. c. præterea. 25. c. maritus. 32. l'aisné*, is the first borne sonne, and therefore *le plus aise* is *post primogenitum*, the second sonne.

P R I S A E, ane French word *princes*, in Latine, *captiones*, sik as ane poynd, distres, or moveable guds, taken for execution of ane decret: for be the laws of France, *Prisæ sunt rerum mobilium. satis a vero immobilium, quia bona immobilia non capiuntur, sed satisuntur. Rebuffus in constitut. Reg. in tract. de litor. obli. art. 5. gl. 2. & de præconum licitationibus ar. 1. gl. 2.* Quhairanent I finde ane ordinance maid, *de modo capienda prisæ*, be King

David

David. 2. 18. Feb. 1269. the 40. yeir of his reigne. Prise sen cap-
tiones domini regis, per solventur & capieuntur secundu consuetu-
dines antiquitus approbatas, & de terris illis de quibus prisa regis,
& servitia debent sumi, & quod in ijs faciendis non siet taxatio
juxta numerum davarum, sed secundum verum valorem bo-
norum.

PROPORCITAS, proportiona assisa, the proportion, report, declaration, or deliverance of an assise. Stat. Alex. c. stat. dom. 5. Quon. attach. c. si quis appellat. 53. assisa reg. Da. c. 9. c. stat. 30. c. stat. dom. 38. Vtherwise it is called, veredictum assisa, the verdict or sumth-saying of an assise. Because assisoures ar sworne to declare the truth and veritie, and therefore ar called *Iuratores*. Like as the assise is called *Iurata patria*, sive *vicineti*, lib. 1. c. dici-
tur. 74. And in the English lawes, ane Iuric.

FVRPRES T VRE, *Purprision*, ane French word, for ane
wrangeous usurpation, taking, or occupation of an uther mans kinde of
lands, quhairof there is 3 kinds. lib. 2. c. dicitur. 74. de judic. c. pur-
prision, *prestura*. c. 138. The first is, quhen any man occupies vnjustlie ony
paerte of the Kings domaine, & proper lands. Or quhen ony stop-
pis or closis up the Kingis common way, passage or street: Or re-
turnis or divertis rinnand waters fra their richt course; Or within
the Kingis Towne & Burgh, occupies the Kingis Cattay, or com-
moun gate, biggand yppon onie paert thereof: Or remoue and
onie thing therefra: Or converting onie paert theirof to his
awin use. And generallie, quhen onie wrangeous occupation is
maid to the hurt and skaith of the Kingis tennente, the Kingis
streete, or commoun way: Or of the Kingis Burgh. The qu-
hilk kinde of *Purpresture*, suld be decided before the Kings ju-
stice and his deputes, be ane condigne assise. And he quha
is convict theirof, falbe in the Kings mercie, and punished con-
forme to his will in his body, and in all his landes quhilk he halds
of him: and mair-over fall restore that quhilk he unjustlie big-
ged and occupied. The second kinde is, quhen ony vassall occu-
pies and usurpes ony lands against his over lord, vther then the
King. Quhilk controversie may be decided be the over-lord in
his awin court, and gif the vassall is convict to have done wrang,
be tynis perpetually all the landes quhilk he haldis of that supe-
riour. The quhilk jurisdiction and power of halding of courts of
Purprision, perteinis to ane Barron, and to vthers, quha ar abone
him in power and dignity; sik as Earles and Lordes. For na-
vassall,

vassall, subject, nor vther tennent vnder ane Barron, hes power to hald sik courtes. *Iam. 1.p. 16. c. 79.* The thrid kinde of *purpresture*, is against ony vther except the king and the superiour: As betuixt nichtbour and nichtbour, subject and subject: quhen ane wrangeously occupies the lande perteining to ane vther, or troublis him in his meithes and marches: quhilk molestation perteinis to the Schriesse, to be tryed before him, be ane brieue, *de nova dissafina*, or *de rationalibus divisis*. Be the law of England. *An. Edward. 1. de begamis. c. 4.* gif ony usurpis and occupies within the Kingis liberty, or ony vther place, contrair the King: Incontinent without proces of ordour of law, the King tuik the land in his awin hand, and therafter it was leisum to ony person, havand entres to compleine thereanent: the lik forme is permitted be the lawes of this Realme, anent the Kingis customes. *Ia. 1.p. 1. c. 8.* And his annexed propertie. *Ia. 2.p. 11. c. 41.*

PVTACIVM, ane French word, huiredome or fornication. *Lib. 2.c. in custodis. 9. c. vlt. 53.* Quhair it is manifest, that ane aire femaill, being within waird, and of lesse age, and commitand fornication, tynis and forefaults hir paift of heritage, and the samin accrescis, and perteinis to the rest of the co heires, or comportioners, gif ony be. And gif there be ane heretrix alanelly quha commits the said fault; all and hale her heritage perteinis to the superiour. But gif ane heretrix of landes, hes bairnes lauchfully gotten in mariage: and after the decease of her husbande, in the time of her viduitie, committis fornication: neither sche nor her bairnes, tynis the heritage. *Quia putagium matris non adimit hereditatem*: The huiredome committed be the mother, dois not disherish the lauchfull bairnes.

2.

QVARENTENA viduarum, in the statutes *Rob. 3.c. de viduis. 22.* From the French, *la quareisme des vefues*, signifies the priviledge of fourty dayes granted to widdowes, after the decease of their husbandes, conforme to the Lawes of England, *Anno. 20. Hem. 3.c. 1.* Quhair it is statute anent Widdowes quhalafter the death of their husbandes, may noch have the dowries of the landes, quhairin their husbandes died vest and saised: and fall happen the saidis Widdowes to recover the samin thereafter

thereafter be pley or processe : they quha troubled and molested them, being convict of fik wrangeous deforment, fall zeild and pay the damages and skaith , to the farrin Wid-dowes. That is to say, the valure of the haill dowrie belaunging to them, from the time of the death of their husbandes, unto the day that the saidis Widdows obteinis decreit in judgment. And the said deforcers nevertheless falbe amerciat, at the King- is pleasure. In the quhilk place it is plaine, that *Quarentena viduarum*, conteiniſ the ſpace of fourty daies: during the quhilk ſpace, ane Widdow may tarrie and remaine in the chiefe dwelling place of her husband, vntill her dowrie be assigned to her, and in the meane time ſulb be ſuſteined vpon the proftes of the heritage. And it is likwile written in *Magna charta, anno 9 Hen. 3. c. 7.* quhilk is conforme ro the Lawes of France , as writis *John Papoſ* in his arreiftes. lib. 15. Tit. des dots. c. 7. & lib. 10. tit. ſubſtituſiones. c. 30. per authenticam præterea. C. unde vir & uxor. And in the borrow-lawes of this Realme, the ſecond, or third wife of ony Burges , after the deceafe of her husband, may not remaine in the house perteyning to his aire gotten of ane vther wife, bot onely fourty daies. *Leg. burg. c. 15. burgensis dnas 25.*

QVHATECVS, ane kind or forme of bread, quihilk
wee call ane fage, or phage, from the Greeke word *φάγω*, come-
do to eate.

R.

R A C H E T V M, ane French word, *Rachapt*, ane ranson. In sum buikes it is called *Rachatum, transpositis literis. Stat 1. Rob. Br. cap. 1. Stat 2. Rob. Bru. c. 7.* Quhair it is called theif bote : and in sum auld buikes *Rachetum. Rachetum est thifibute vel redemptio capta pro venditione furum, latronum vel aliorum male-factorum* : that is, theif bote or redemption taken for thieues, robbers, or vther malefactours.

R A P T V S, rape, ravishing or deforcing of weemen, qu-
hilk is ane of the four pointes or pleyes perteining to the Kings
Crown, and to nane vthers. *vid. placitum vid. Martbrum.*
Ravishing is ane crime, quhairof ane wōman accusis ane man,
allegdand she is oppressed or defiled be him, against the Kings.

De verborum significatione.

peace, *Lib. 4. c. raptus 9.* The quhilk complaint suld be maid the same day and nicht, in the quhilk the crime is committed, *Quia lapsus dies hoc crimen prescribitur. Quo attach. c. de catero 48. Statuit. Wilb. c. Item statuit.* In the lawes of England *Westm. 11. c. 14.* Rape is quhair ane man ravishis or takis ane vther mans wife, widdow, or maiden violently, and hes a do with her against her will. And albeit she afterward consent, zit it is felonie, quhilk is confirmed be *Cheff. in consuetud. Burgund. Rubric. 1. verb. Es droict d'icellis Nis. 43.*

REIF, or robbery, is likewise ane of the four points of the Crowne, *Lib. 4. c. die luna 13. leg. Malc. Mak. c. 4. ass. reg. Da. c. 1.* Robberie is quhen ane man lyis be the Kings hie-waie, passing to mercat-towns; in woodds, ditches, or ony vther secrete place, quhair people cummis furth-by, and robbis and spulizes them, albeit he take away bot the valour of ane pennie, or lessie, it is felonie: For the mala-pertnesse of the deed, breaking of the Kingis peace, and the daunger in the quhilk ane man is of his life, causis the offense to be the greater, then gif the gearc swa robbed or spuylized had bin thifteously stollen; as is written in the Lawes of England. *An. 23. Hen. 8. c. 1.* In the law of Normandie, *lib. 3. c. 1.* Robbery is the taking of vther mens geare be force and violence: And the committers theirof, in Lattine ar called *raptore*, in French *voleurs* or *Robeure*, betuix riefe and is different from theif quhilk is committed quietly and pri-and theif. vily, without violence. Mair-over, riefe is ane greater crime then theif, because riefe is committed baith in the gudes, and in the person of the posessour theirof; and theif is of the gudes and geare allancerly, *Cheff. in consuet. Burgund. rob. 1. fel. 5.* Be the law of this realm, the complaint of riefe or robbery suld be maid be him quha is robbed, and damnified within the time, as is foresaid, of the ravishing of weemen. *Quon. attach. c. de catero 48. lib. 4. c. raptus 9.*

RECOGNITION of landes is commonly vsed in the Law, and practicque of this realme. *Sicut feudum dicuntur aperi-ri domino: ita terra dicuntur cadere in commissum: sicut si in hoc casu ob culpam vassalli, & in Emphyteusi, or few landes, ob non solutum caronem, seu pensionem, lib. 3. c. ex locato. 11.* For the vassall tynis landes halden be him be service of ward, be reason of his awin fault, as fulbe hereafter exponed: and the proprietar of few lands, may tine and fore fault the samin, for none

none payment of zeirly duty, *Cognoscere*, is to know and vnder-
stand, *recognoscere* is to know againe, or at the secund time to
understand: for generally, all superiors of quhom lands ar hald-
en in chief, first hes bin proprietars of the famin lands: quhilk
lands being annalied, and sauld be them heritably, to be halden
of themselues and their aires, ceasis to be propertie to them, and
becomes tennendrie immediatly halden of them, and their aires.
And gif it happenis the vassall or possessour, to quhom the lands
ar sauld, to commit ane fault or crime, quhairby he tynis and
forefaultis the lands: the superioriour hes entresse and regresse to
the property of the lands, and may recognosce the famin, and as
it were the second time vindicate to himself the propertie there-
of. Swa the famin lands, quhilkis were first propertie to him, and
thereafter tennendrie, be reason of the alienation, nowe be-
comes againe propertie, and returnis to their first nature and
condition, *Iure accrescendi, seu portius consolidatione proprietatis
cum superioritate, ob culpam vassalli.* Recognition properly in
the practicque of this Realme, is quhen ony vassall, or free ten-
nant, haldand his lands be service of warde and relieve, sellis
and annalies all and haill his landes with their pertinentes, or
the maist paire thereof, without licence, consent, or confirmati-
on of his Over-lorde. In the quhilk case, all and haill his saidis
landes, alswell not annalied, as annalied, as said is, may be re-
cognosced and raised in the superiouris hands, and bath the
propertie and possession theirof perteinis to him to be bruiked
or disposed be him at his pleasure, quhairof diverse and sindrie
practicques ar extant in the Register in the dayes of K. *James*
the fourth, of gud memorie. The superioriour understanding the
landes to be wrangeously annalied, as saide is; incontint there-
after may use the recognition thereof, and without processe or
ordour of law, may take saising of the famin, conforme to the
auld practick of this Realme: because the famin alienation is
done to his dishonour and contempt be his vassall, quha suld
do reverence and service to him, and therefore without his con-
sent suld not do ony thing to dissolve the league and band,
quhilk is betuixt them. Mairovr the vassall may not make the
said alienation, because thereby he may become puir, and una-
ble to do to his superioriour sik service, as he suld do of the Law.

The causes
of recogni-
tion.

Cmia. Lsb. 1. Defend. And not understanding that the saising
is taken bee the superioriour, zit the vassall or possessour tnis

nor forefaltis na waiis the propertie of the saides landes, untill zeir and daie be out-run : Swa that he do diligence within fortie daies after the said recognition, and taking of the saifing, to crave and aske fra his superiour the saides landes to him to borgh, that is, to repledge them, find and pledge and caution, that he shall be reddie to do to his superiour, anente the saides landes, all that equity and lawe requiris. *Stat. Rob. 3. cap. 2.* This kinde of recognition is conforme to the Lawes of the Fewes. *Quia fudum amittitur, si fidelis libellario nomine, amplius medietate in feudum dederit aut pro pignore plus medietate obligaverit Sect. 1. quib. med. feudum amittatur. & Sect. 1. de alienatione feudi. Et in jure Canonico. c. 2. & ibi gl. ex tr. de feudu. Porro libellarius contractus, dicitur venditio, qua sit scriptura interveniente, certo prelio & certa pensione constituta, in annos singulos, ut post Fendistas scribit Cuja. in d. Sect. 1. Recognition of Lands is some times generally taken monie waiis. *Stat. Rob. 3. cap. nota quod iste. 21.* First, gif the vassall deceis, the superiour may recognosce & reteine all the landes halden of him unaire, they be recovered fra him be the entresse of the righteous till andthat be reason of non-entries.*

2. After that the aire hes recovered the lands furth of the hands of his superiour : Nevertheless the superiour may recognosce and reteine the famin, untill security be maid to him for payment of the relieve, *vid. relevium*

3. Gif the vassall is fugative for flauchter, and not law bidand, the superiour may recognosce the land halden of himselfe, sa lang as the felon or man-slayer happenis to live. Conforme to the quhilke, be the actes of Parliament, the life-rent of the vassall, being zeir and daie at the horne, perteinis to the immediat, superiour, except he be rebell for treason, in the quhilke case, his life-rent, and all his lands, guds and geare moveable and immoveable, perteinisto the King allanerly. *Quia pena debet eidem applicari, adversus quem committitur culpa.* 4. Gif the vassall annalies his landes, or the maist paire thereof without licence, consente, or confirmation of his Over lord. The over-lord may recognosce the same, as said is. Bot in this case he is oblisched to let the lands to borgh, to his vassall ; askand and cravand the famin within the lauchfull space of fourty daies, after the recognition ; and saifing taken untill it be tryed be the Judge Ordiner, quhidder the cause of recognition be lauchfull

De verborum significacione.

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or not. Quhilk being found lauchfull, the Judge suld counsell the King, and decerne ony uther superior to hald his hands fra the Landes, and let them to borth to his yassall. And gif the cause be found just and reasonable; The Judge suld decerne the propertie, and possession of all and haill the landes, to per-teine and remaine with the superior.

5. Quhen twa or mair partes contendis be way of deede and armes for the possession of lands, the superior thereof, may recognosce & sequestrat the samin, untill it be tryed quhilk of them is lauchfull possessor: and thereafter let the landes to borth to him, quha is found to have best possession.

6. The superior may recognosce and reteine lands halden of him in cheife, for service aucht to him, furth of the samin landes. Bot bee the practicque of this Realme: the service aucht to be proven and liquidat, and thereafter the lands may be lauchfully comprised.

7. Lands halden in few-ferme, payand and ane certayne zeirly dewty, *nomine feudi-firma*, may be recognosced bee the superior, for none-payment of the few dewtie, and that twa maner of waies. The first, *ex provisione legis & natura contractus*. For the few-fermorer not pay and his few-ferme, for his ingratitudo and unthankefulnesse, tiris and fore faltis his few-ferme, be the disposition of the Law, quhilk as zit, was not in practicque and use within this Realme.

The second is, *ex provisione hominis, & conditionibus contractui insertis*, quhilk is called ane clause irritant, as quhen ane clause and provision is conteined in the indenture, that if twa or maa termes run in ane non payment of the few-ferme duetie: then and that caise, the indenture of few-farme to be *irritum*, null and of nane availe, quhilk is conforme to the daily practick of this Realme, *Quia pacta converta legem contractibus prescribunt. vid. l. & Tit. c. de jure emphyteu. Alwaies, be the act of Parliament made be Ia. 6. p. 15. C. 246.* Alienations of lands made in few-ferme, are null for not-paymeme of the few dewties, be the space of twa zeires, albeit na paction or provision be maid there-anent in the indenture.

RECORD VM, *Recordatio lib. i. c. contingit. 31.* quhair-anent I finde difficultie. Alwaies *recorda summonitoris*, signifies the rehearse, reporte, or testification of the execution of the summonds, briue, or uther precept. *Ia. 1. p. 9. c. 112.* quhilk execution, is now called *Indorsation*. Because commonly it is

written in dorso, and upon the backe of the summondes, leg. Forest. c. 25. And be the practik and daily consuetude of this realme zit observed, the execution of all brieves before inferiour Judges, and of all criminall summondes before the three Estaites in Parliament, ar verified in judgement, be the record of the executor thereof, and swa witnesse at the least. And in auld times the seriands or maires, maid the record of the summondes, be word, or bee writ, as they pleased: and verified the samin, as said is. And untill the samin were done, the defender could not be coynpelled to make ane answer. lib. 1. c. cum antem. 8. de judicio. c. 50. And King David the second. 18. Feb. 1369. and of his reigne the forty zeir, statute and ordained anent the record of seriands or maires, that the summondes and record theirof, fall be put in writ, gif it please the serjand or maire, and he shall reade the samin gif he can, in plaine court: Vtherwaies, he may make the record be word, in the best forme he may, and gif he failzies, he may be helped and supplied be interrogatours of the Judge, concerning all and sindrie clauses or arrickles, necessarily used in the record of ane summondes, quhilk record the seriand or maire fall prive sufficiently be lauchfull witnesse. And the said record being swa maid, the samin fall be received as lauchfull, and the contrair partie fall not be heard to object against the same, or to propone ony exception against the lauchfulness theirof. And it shall he leisum to the Schireffe, his depute, seriand, mair of fee or ony uther depute serving in the office of ane seriand or mair, be the authoritie of the summondes of the record or indorlation thereof, swa that they be qualified, and abill to do the samin. 1a. 1. p. 9. c. 112.

IT EM, recordum curia, signifies the report, rchersall, or minute of that quhilk is done court or the interloquitor of the Court. lib. 1. c. contingit. 31. Quon. attach. c. nullus settator 20. In the Normand law, lib. 9. c. 31. via Settator. vid. Verda, quhilk in the auld times was nocht written in buiks, bot in rolled togidder in paper. Like as the Kingis rollis are zit written in Parchment in the Checker. Therefore they are called the roulement of courte. As the Kingis rollis or rotulys, and the Clearke of Register clericus Rotulorum, in Latine properly volumina, quia involuntur, & in se quasi retorquentur. And it is to wit, that actiones and pleyes, are either directly, and from the

the beginning persegued in ane court : or they come fra an inferiour court, to ane superior *per translationem. lib. 3. c. frateria. 16.* quhilk now is called advocation : As quhen ane pley or cause, is advocate from ane inferiour Judge, to ane superior : quhilk advocation are permitted and leasum to be maid to the Kings court allanerlie, be the auld law of this realme, sik as the Iustice court or Schireffe court : and now be the pradick used, and observed to the Lords of Session, and College of Iustice : And swa becaus he quha alleaged that wrang was done to him in the inferiour court, raised the record, or interloquitor pronounced against him, and summond the Judge to compeire before the Kings Iustice, or Schieffe, to heare and see him decerned to have done wrang. *Therefore sola curia domini Regis, dicitur habere recordum. b. c. Potest statem cognoscendi de recordis & interloquitoris, qua transferuntur ab inferiore curia ad superiorem.* Albeit ilk lauchfull court, sik as ane Barrone courte, hes their awin recordes, and interloquitoris ; in all sik actions as ar intended and desidied before them, and nocht Advocate to ane superior Judge.

R E G R A T E R I S. *leg. burg. c. regratarij. 70.* Quha by is ony merchandice or uther thing, and takis unleasumlie greater price for the samin afterward, as is exponed be *Ia. 2. p. 6.c. 23, 24. Ia. 6. p. 12. c. 148.* In the civil law, regrateris are called *dardanarij, qui emunt, ut possint postea pluris vendere. I. an- nonam. 6. de ver. & extraord. crim. A quodam Dardino, qui annonam flagellabat. Alciat. lib. 4. de verborum significacione.* And swa regraters are so called be reason of the augmentation and hichting of the prices. *Forestallers* are properlie they quha pre-occupies and byes merchandice before it cum to the mercat, or to the stall, or place quhair it suld be savld, or the time of day statute and ordained theirito. *Ia. 5. p. 4. c. 20.* And mair-over it is statute that na man dwelland within burgh, of without the samin, fall upon the Faire daie, bye ony thing out-with the portes of the burgh, *c. nullus. 75.* And likewife, na person suld bye fish, flesh, viiectuall, or ony uther thing before mercat day, or the ringing of the bell in the steipell. *Stat. gild. c. 29.* And mair-over *forestallers* are challenged & accused, because they sell their gudes, and payis not the Kingis custome ; that they sell their gudes privilie upon their awin sluite, that they ar fore-byars of quheate, beare, aites, cattel, and ar cowperis and

De verborum significacione.

and sellers theirof, turnand the samin in merchandice. *leg. burg. c. de modo calumniandi forstallatores. 154.*

RE L E V I V M, ane French word, from the Latine, *relieve*, quhilk is to relieve or take up that quhilk is fallen. For it is given be the tennent or vassall being of perfite age, after the expiring of the ward to his over-lorde, of quhom hec halds his lands be knicht service, that is, be ward and relieve, and be payment thereof he relieveis, and as it were raisis up againe his lands, after that they were fallen downe in his superioures hands, be reason of wairde. *Lib. 2. cap. dicitur autem 72. Leg. Forst. cap. si quis Comes 73. de judic. 65.* And the profites of the Landes of the zeir, after the end of the wairde quhilk suld be given in name of relieve, are understand to be the retoured maill, of the saides landes, conforme to the new extent thereof. And therefore gif there be bot onelie wairde, and the aise enter before ane terine run thereafter, the King or uther superiori suld have na relieve, *Quia hæred ad atatem perveniente, & facta ei hereditatis restitutio, quicunq; erit a relevia, ratione custodiae. lib. 2. cap. tandem. 70.* Be the Law and consuetude of this Realme, the superiori nicht nocht be compelled after the wairde, to restore the Landes to his vassall, until he had beene first satisfied for the relieve: because he had libertie to reteine the Landes until the said satisfaction were made. *Stat. Rob. Bru. 3. cap. nota quod iste 21.* Or else it was leasum to him as he pleased, to poynd the ground therefore *Quia dominus potest disstringere tenentes suos pro suo relieve, & servitio de fendo suo sibi debito. lib. 2. Sunt quidam 73.* Bot now by the common practique, the none-payment of the relieve, is na lauchfull excusation to the superiori, anent the receiving of his vassall. Bot he will be compelled be precepts of the Chancellarie, to receive his tennente, or else he tynis the superioritie, induring his life time. And it is leasum to him to poynde the grunde for payment of the relieve. *Quia relevium est debitum reale, & adheret fundo.* The beginning, and the first institution of the ward and relieve, was in the time of *Malcolme* the second, called *Malcolme Mae Kenneth*, Quha gave all and haill the Landes of this Realme to the inhabitants thereof, and reserved nathing to himselfe in proprietys, bot only his royll power, and the Mute Hill of *Scone*, quhair be suld hald Courte, and receive homage and fealtie of his vassal-

Ex. In recompensation quhair of all the Barrones gave unto him the waird and relieve of the aire of ilke barrone, for his princely sustentation. In the English Lawes, reade in *Magna Carta. Anno 9. Hen. 3. cap. 2.* And the statute of wardes and relieves, made be King Edward the first. 18. zeir of his reigne.

Replegiare, to replege, that is, quhen ony man, be vertue of his awin jurisdiction, bringis backe-againe, or reducis to his awin court his awin man, fra ony uther mannis court, and leavis ane plege or cautioner behinde him, for administration of Iustice. *vid. Cultrach.* It is not leasum to ony man to replege fra ony uther court ony person, bot his awin liege man, or halding land of him, or remainand in his service, as ane of his familie or consanguinitie. *Stat. Alex. c. Anno 4. Stat. 2. Rob. Br. c. 11. Ass. reg. David. c. Statuit. 37.*

Rescantisa, *Lib. 1. c. Essoniorum. 10.* Ane seiknesse and infirmitie, quhairby ony man is heavily vexed. *Essonium de Rescantisa, id. m. nalet quod excusatio, de malo leti, Bedde-evil. Cum quis morbo ita affligitur, ut sit lecto affixus* in French, *Mal. de Lit. stat. Rob. Br. c. 5.* In the Law of Normandy. *Lib. 9. c. 10. Essoinzie* or excusation of *Malrescant*, is quhen ony person lyand bed-fast in his awin house, or ony uther place, is heavily vexed with seiknesse, that may not travell without danger of his life. *Injure civilis morbus fonticus diciatur, qui enijsque rei agenda, impedimento est, veluti febris: Et legitimam excusationem ad dilationem prabet. L. Quasitum 60. ff. de re Iudic. Aulus Gellius Lib. 20. c. 1. Appellat Morbus fonticum, quemlibet morbum vehementiorem, vim gravioris nocendi habentem.*

Essonijs
umin.
Rescantisa

Morbus
fonticus.

Responde, or the buike of *Responde*. *Ia. 6. p. 11. c. 73.* It is made and written be the directour of the Chancellarie: For quhen he directis precepts to the Schireffe or utheris, to give fassing of ony landes retoured before him to the Chancellarie: He makis ane memoriall of the daite of ilke precept and dewtie of the landes, with the manuer of halding: And commandis the Scheriffe to take securite for the fassing, during the time of the ward, and none-entrese, and of the relieve aucht-and to the King, gif the landes be halden be service of ward and relieve: Or of the doubling of the few-ferme, or of the blanch-ferme, according to the halding of the landes. *Quihilk buik*

De verborum significacione.

buik zeirly is presented to the checker : And ilke Schireffe, and uther Judges, givers of saifings upon precepts, direct furth of the Chancellarie, as charged therewith in their compts, compelled to make answer thereunto, and payment of all summes contained therein: for the quhilk cause, it is called *Responde*, quhilk is the first word of ilk article of the said buik. Further in the end of the saidis precepts, it is said, *presentibus post proximum terminum minimè valisun-
ris*. And therefore, gif the obteiner of the precept furth of the Chancellarie, lye out and take notsaifing upon the samin, quhill ane terme and maa be by run, after the daie thereof, he suld come againe to the Chancellarie, and rayse ane new pre-
cept, quhairin is augmented the byun mailles of the landes, sen the daie of the first precept, and ane new memoriall or *Re-
sponde*, is maid theirof.

Retour, quhom be it is maid, and quhy it is sa called. *vid.
byreue de morte antecessoris.*

Regres, from *Regrediendo*, like as

Reversion, a *Revertendo*. For like as the byar of landes, lettis them returne to the seller thereof, be the reversion given unto him. Even swa, be the regresse the superior of landes wed-
set be his vassall, after the redemption thereof, suffers the first seller of the samin to come backe againe to his awin place, anent the halding of them, as hee did before the said aliehation. Swa reversion and regresse are different : For reversion is given be him quha byis the land, *Cum pacto de retro venden-
do*, to the annalier thereof. In French it is called, *Ius reachepe-
nus* or *reachept*. And ane regresse is given be the superior of landes, to the annalier thereof, quhailby he promisif to receive againe him, or his aires to be his vassalles, as they were of before, quhen it fall happen ony of them to redēcine the saidis Lands. 27. November. 1563. *George Halyburton*, contrair the Laird of *Hatton*. And gif ony man annalies landes under reversion, to be halden of him and his aires, ane regresse is not necessar. For they being afterward redeemed, he quha first annalied them, recovers the property thereof, without ony new saifing, and the same returnis to him, and is consolidat, with the superioritie quhilk he reserved to him and his aires, the time of the alienation. Bot gif ane man annalies lands to aneather, under reversion to be halden of the superi-
oīt.

out, and the byar thereof obteine infestunet, and saising hal-
den of him: The annalier thereby is denuded of the proper-
tie, and alisva is na langer vassall to his former superior, and
can na waies recover his former estait, bot be redempcion of
the landes, conforme to the reversion granted be him quha
boucht them. And alisva be ane regresse, given to him be the
superior: In the quhilke case it is necessare to him, quha first
annalied the landes, and thereafter redeemed them to tacke
new saising, to the effect the propertie quhilk was first anna-
lied may returne to the seller. And that he may halde the
sa-
min landes in chiefe of his superior, and his aires, as he did
before the alienation. And it is generallie to be obserued, that
quhaire ane regresse is required, ane new falsine is necessare.
In auld times, the reversion was continued in the chartour,
as is manifest be diverse Chartoures, zit extant in the register,
given in the time of King David the second: conteynand the
tenour of the reversion after the clause, *Tenen & haben.* and
uthers auld chartours in the forme after following.

OMNIBVS hoc scriptum visuris vel audituris I. dominus.
de A. Salutem in domino. Noveritis me concessisse, impignorasse,
& ad immobile vadium dimisisse, & hoc presenti scripto meo
confirmasse, mobile viro V. de F. Omnes terras meas de A. cum
pertinentijs, in baronia de C. infra vicecomitatum de B. pro vi-
ginti Marcis usus moneta Scotia, mihi per predictum V.
tempore confectionis presentium, ad opus meum valde necessa-
rium, gratauerunt mutuatis, & in usus meos converxis. Tene-
& haben. prefato V. heredibus suis & assignatis, a me, hered-
ibus meis & assignatis in feodo & hereditate, cum omnibus
commoditatibus, libertatibus, & ariamentis ac justis pertinentijs
quibuscumque adeo libere, & quiete, plenarie, & honorifice, bene,
& in pace: sicut ego vel prædecessores mei, prefatas cum perti-
nentijs, liberis aut quietius tenui, aut possedi, tenuerunt, aut
posseuerunt, aliquo tempore præterito. Et semper quousque ego præ-
dictus I. heredes mei, vel mei assignati viginti marcas prefate
moneta, prædicto V. heredibus suis vel suis assignatis, in uno die,
inter solis ortu & occasu ejusdem, Abirdene in Ecclesia parochiali
eiusdem; super magnum altare, simul & semel, persolvero, vel
persolverint sine fraude. Fructibus, firmis, vel quibuscumque alijs
commoditatibus seu envolumentis medio tempore per prædictum
V. heredes suis vel assignatos, perceptis vel p:recepientis, leva-

De verborum significacione.

tis vel levandis, inducta summa viginti marcarnm, aut ejus solu-
tione, nullatenus computandis. Quia dedi, concessi, & assignavi
prefato V. heredibus suis, & assignatis, omnes prefatas firmas,
fructus, & alias commoditates quascunque, & emolumenta de
dictis terris cum pertinentijs, provenient, toto tempore, quo
predicta viginti Marc a (ut premittitur) non fuerint persolue-
ntur mea libera donatione, & para voluntate, pro suis consilijs, auxi-
lijs & gratitudinibus, multipliciter mihi factis & impensis. In
quibus quidem terris cum pertinentijs, prefato V. tradidi sasnam, &
possessionem corporalem sibi, heredibus suis, & assignatis, juxta
tenorem predictis scripti, remansuram. Ego vero predictus I.
heredes mei & assignati, totas terras predictas de A cum per-
tinen. prefato V. heredibus suis & assignatis, juxta vim,
tenorem & effectum predictis scripti in omnibus & per omnia,
contra omnes mortales varrantizabimus, acquietabimus, &
defendemus. In cuius rei testimonium hunc predicti scripto meo,
sigillam signatum apposui, & propter maiorem rei evidentiā,
meum Andrea Giffard, tunc aldermanni de Abirdene, predictis
apponi procuravi. Apud Abirdene 23. Augusti anno
Domini. 1419. Testibus Laurentio de Abernethy, Domino de
Rothemay, Domino Wilhelmo de Lundoris vicario de Abir-
kerdon, cum multis alijs ad pramissa specialiter vocatis. Bot
now the Chaitour is given be the seller of the lands, and the
reversion be the byar thereof, severally sealed and subscribed
be them, and the byer keepis the Chartour, and the annalier
keepes the reversion, as their proper evidentes, quhilke forme
appeares to have the beginning in the dayes of King James
the Thrid, quha in the acts of Parliament. p. 5. 20. Novemb.
c. 27. callis the bying and selling of landes, be chartour and
sailing, and taking againe of reverions, ane new invention:
and for the mair securitie, ordainis all reverions to be regi-
strate. vid. Sterlingus. vid. Vadum.

S.

SCACCARIVM, the Checker, in French *Eschequier*, the
place quhair the Kingis rents and patrimonie, alswaif
propertie, as casualties, is inbrocht, compted and received,
and the profitis of all lands fallen in the Kingis handes be
reason of wardc. *Lib. 2.6. Si vero dominus 46.* Some callis it
the

the soveraigne and supreame court; in the quhilk all causis and actions ar decided in the second instance, speciallie in the cuntrie of Normandy: For it is written in the Law of Normandie. *Lib. 15. c. 1. in fine*, That *Philippus Pulcher*, did institute twa Parliaments in Paris, and twa Checkers in Roan. *Paulus A Emilius* writtes, *Scaccarium* to be as it were, *Statarium, quod homines ibi in Iure sificantur, vel quo l sit Stataria & perennis curia, cum cetera curia esset iudicativa, nec loco, nec tempore statu*. As writis *Buletus in Annotationibus in Pandectas*. Be reason as said is, the Checker was ane certaine stable- court, and nocth deambulatour, or runnand fra time to time, or fra ane place to ane vther: as the Session of this Realme was before King *James the Fifth*. *Qui instituit Statariam curiam, cum antea esset iudicativa*: Be reason it did sit thrif in the zeire, quhair and quhen it pleased the King. Vthers thinkis that *Scaccarium* is so called, *a similitudine ludi Scacchorum*: That is, the play of the Chesse: because mony persones conveenis in the Checker to pley their causes, contrare vthers, as gif they were fechtand in ane arrayed battell, quhilk is the forme and ordour of the said playe *Ius Normandie*. *Lib. 15. c. 1. in fine*. Vthers alleagis, that is cummis fra ane auld Saxon word, *Scata*, as writis *D. Thomas Smith*, quhilk signifies treasure, taxation, or impost, quhairof, and of vther casualties, compt and reckoning is maid in the Checker. Quhilk compte, (like as all vther c. mptes) is maid in six forte and forme, that *tabula accepti*, that is, the charge: And *tabula expensi*, that is, the discharge, at equall, and *sic aque*, because the compter hes given furth na mair, nor he hes received: and alswa hes given als meikle furth as he hes received. Quhilk is called *pariare rationes*, and this compter is called *Pariator*. *I. vlt. scit. id: m qua si de condit. in deb. I. p. nult. scit. conductore de iure immunitat*. Or else the charge and discharge are inequall in six maner, that the compter hes received mair nor he hes expended, and sa at the fute of the compt, he is found restrand awand certaine sums up-taken be him, and not given furth, quhilk is *reliquare rationes*, and this compter is called *reliquator*, and is obliisched *reliqua inferre* to pay the rest auchtand be him, *I. creditor 102. scit. Valerius de solutionibus*. Or thridly, *tabula expensi superant tabulas accepti*; quhen the compter hes given furth more nor he hes received

De verborum significatiōe.

ceived, and swa is super expended, quhilk is called *supērērogāre*, i.e. *supērērogāre, vel supērēratiōē seu tabulas acceptā*. And the compter quha makis sik ane compt, is called *supērērogātō*, Quhilk word is used in the Evangel of S. Luk. c. 10. 35, quhair the *Samaritane* have and piety and compassion vpon the man, quha betuixt *Ierusalem* and *Iericho* was spuilized, and wounded be thieues and robbers, did commit him to be cured be the host of his ludging, and gave him twa pennies, and promised to recompense quhatlumever he spended mair. *vid. Ballivns.*

SACERBORGH, or rather *Sickerborgh, secūrus plegiūs*, ane sicker sure, sufficient cautioner. *Quo. attach. in prin. 14. 2. p. 14. c. 75.* Is ane manner of borgh or caution, quhilk ane findis to ane vther, and speciallie in actiones, or pleyes: for quhen onie man hes action to ane vther for theft or slaughter, quhairof he offeres to accuse him judiciallie: It behuiffes the persewar, to knit and oblysh him, in the handes of ane officiar, or before ane judge competent: and finde sure caution, and sicker borgh, that he fall persew in forme of Law. *Mod. ten. cur. c. 44. lib. 4. c. 1. Stat. Alex. c. 9. c. si quis conquest 10.* In the civill law, the accuser in criminall causes *cōgitūra scribere nōmen. l. 3. ff. d. accusat.* And conforme to the practik and law of this Realme, the persewer quhen he raisis the Letters, findes Caution to reporte the samin againe, dewlie execute and indorsat. And also to persew at ane certaine day, conforme to the tenour of the letters. And more-over, quhen he accuses ane vther criminallie, before the iustice and his deputes, he suld sweare the dittay to be trew, quhairvpon he accusis the defender: bot the Kingis advocat accusand criminallie onie of the Kingis lieges, is na waies oblyshed to fweare in this case.

SAK, *Lib. 1. c. 3.* In sum auld buikes it is called *placitūm & emendātē transgressiōē hominū in curia nostra.* In the Britton lawes of King Edward, it is written, *Sachaeſt si quilibet aliquem nominatim de aliquo calumniatus fuerit, & ille negauerit, foris factura probationis vel negationis (si evenierit) fuerit.* Quhilk may be called the vnlaw or amerciament payed be him qnha denies that thing quhilk is proven against him to be trew, or affirms that thing quhairof the contrair is of veritie.

SAISINA, ane French word, saising or possession, *vid. Diffasina.*

SCHAFFA, *sagittarum*, ane schife of arrowes, containing xxiiij. Vtherwaies called *garba*. Ane scheife of Iron, conteines sextene gades, ane scheife or steile contynes fourteene gades. *leg. narium.* or schip lawes. c. 2.

SCHIREFFE, ane principall ruler or judge of ane certaine part of the Realme. In Latine, *praes provincia*. Aluredus in the confederation made with *Gumtherus* king of Denmarke, divided England in *Satrapias, centurias, & decuriis*, and called *Satrapian* ane Schire, that is, ane cutting of section, as is written in the auld *Briton* lawes, *verb. centuria*: like as we say as zit, scheir cornes; or scheir grasse, or ony paire of schieres, quhair with claih is cutted. And swa ane schyre or Schireffedome, is ane parte of lande, cutted and separate by certaine Meithes and Marches from the rest, within the quhilk the Schireffe as judge, dois iustice, and pronounces decretes and domes, to all the inhabitants theirof: For sehyre is ane cutting or section, as said is: And dome signifies ane sentence, decret, or judgement; as demstar or domestar, is he quha pronounces the dome or sentence in court: And *dies Iudicij* is the day of iudgment, or deomisday. It is also called *comitatus, provincia, vel vicecomitatus*. *lib. 3.c. tali anem.* 18. *lib. 4.c. si quis 28.c. signis in manibns. 42.* Schireffes in this Realme hes their offices given to them be the King in heritance, contrair to the act of Parliament. *Iam. 2.p. 11.c. 44.* Quhilk is the cause of great enormities and wranges, be reason the Schireffes being infest heretably, thinkes themselves sure of their office, and regardis nocht the execution theirof. And to the effect that gud men may mak conscience of their calling (quhairof they fall make compt and reckoning to God, of all evill committed, and of all gud omitted) And that vtheris may be instructed of their dewtie, and ather mooved to do the lamen: or else be punished for negleeting theirof: I have collected and gathered furth of the lawes of this Realme, ane short rehearsall and summe of all thinges pertaining to the office of ane Schireffe: and first of personnes, sic as Schireffes, Deputes, Clerks, and Seriandes. Secondly, of Shireffe Courtes. Thirdly, of his office, and iurisdiction, quhilk generallie consistis in observation and execution of all the Kingis lawes:

lawes : and particularlie, in particular actions and pleyes, pertaining to his jurisdiction and court : Quhairof sum are ci-vill, vtheres are criminall. And last, of the paines and punishment of malitious or negligent Schireffes.

Deputes & clerkes. First, Schireffes suld be in all and sindrie partes throwout the hale realme and speciallie in the North partes and West partes of the samin, sik as the North Iles and South Iles, for the acqueting of the people be Iustice: and in *Rosse* and *Caithness*. Iam. 4.p. 6. c. 59.c.61. And to the effect they may the better exerce their office, and do iustice to every person, as escheiris, they suld be gud sufficient, and qualified men, as is statute be King David. 2.6. Nov. 1357. In ilk Schireffedome they suld doe iustice to the Kingis Lieges, hauld courts in lauchfull time, and continue the samin according to law, swa that Actiones and processe, begun and intended before them, fall na waies be delayed: hrow their negligence, fraud, or malice *Sta. Rob. 3. ex lib. Sconensi*, and suld do iustice and full law, alsweil to puit as to rich, under all paine, and charge that may follow. Ia. 1. p.1.c.45. And briefly all schireffes and vther ordinar judges, their deputes and clerkes, suld knaw and ynderstande the lawes of this realme, and actes of Parlemente, quhair of the execution is committed to their charge, quhilk they suld cause be execute without delay. Ia. 6. p.12.c. 124. and suld not only be qualified in iudgement and knawledge, to minister iustice, bot also suld have sufficiently of their awin, in landes, gudes and geare, quhairin they may be punished, being found culpable in execution of their office. Ia. 1.p.1. c. 6.

The Shireffes fee. The Shireffe suld have for his fee of the escheittes, ten pundes. *Leg. Mal. Mak. c.1.* Quhilk fee suld be payed to him of the extractes and eschittes, of his awin court, and na vtherwaies: but na fee suld be allowed to him, untill first he make compt to the Checker of his intromission. *Aff. reg. Da. ex lib. Sconensi.* And vnder pretence of his fee, he suld take nathing, nor use ony extorsion vpon them, quha cummis to faires, Parliament, or generall Councelles. Iam. 3.p.5. c.33. Nor suld take na distresse of gudes and geare of little price and quantitie, cummand to the faires or mercattes: Alwaies he sulde have the best oxe or cowe, or vnridden horse, quhilks are stalled or brought to be sauld. Ia.2.p.13. c.60.

At Schireffes sal have gud and sufficient deputes, or bailles, for quhom they sal answer. And gif ony person be infest with sik office in auld time, and is unable, or un-apt to use and exercise the samin in his awin proper person: he sal present to the King, ane sufficient depute, to exercise the saide office in his place, for quhom he salbe answerable, as is statute be King *Da. 3. 6. Novem. 1357.* quhilk is confirmed be *Iam. 1. p. 1. c. 6.* And generallie it is trew, that ilk Schireffe and uther ordinar judge, sal be haldan to answer for their deputes, as themselves *Ia. 3. p. 5. c. 26.* And therefore all Schireffes and iudges, for their awin better security suld make their deputes, ane or maa, gud & wife substantious men, of best fame, knowledge, understanding, and experiance, and least suspect within the schirefdom, and suld cause them be swome the time of their admission, that they sal leilley & truely use ther office: and gif they continue them fra ane zeir to an uther: they shall cause them be zeirly sworn, for administration of justice at the head-court after *Ma- chaelmes. Ia. 5. p. 6. c. 73.*

Schireffe Clerkes suld be honest famous men, quha be themselves and their sufficient deputes, sal be alwais resident, within the head burgh of the Schire, for registration of letters of horning, and better execution of their office. *Da. 6. p. 6. c. 75.* Be the auld law of this Realme, the Schireffe clerk was input and out-put be the King: and had na league nor bande with the Schireffe, but was bound and obliſhed to the King allanerly, and was susteined in his highnesse house, as occasion & time required, and did all things concerning his office, with the counsell and advise of the King. *Aſſ. reg. Da. in lib. Sconensi.*

The Schireffe-Clerke receivis for his fee of ilk amerciament or un-law, twa shillings. *Leg. Mal. Mac. c. 1.* gif he sal happen to be found culpable in execution of his office, and specially aſtent the registration of letters of horning: he suld be punished of all his gudes moveable, to be applyed to the Kings use, and the Schireffe sal pay for the faulc of his Clerk, ane hundredth pounds to the King, and all damage and interesse of the party grieved. *Ia. 6. p. 11. c. 71.*

Schireffes suld send their deputes and Clerkes, ane or maa zeirlie, at the first day of November, to the Lords of the Session, to be examined and admitted be them, under sik paines, as the Lordes sal please to modifie; in case of failzie, to be

Schireffes
deputes &
their qual-
tie.

Schireffes
Clerkes.

Deputes &
Clerkes.

employed to our Sovereign Lord the King, p. 1. t. 14.
6. p. 13. t. 124. 1. 124. 1. 124. 1. 124. 1. 124. 1. 124. 1. 124.

The Schireffis serjant, or officiar, suld have ane horne, and ane reid wand of thre quarters of ane yaird lang at the least, and gif he have not the lamen, he suld be challenged therefore be the Schireffe in his head courtes. *Yar. 1. v. 6. c. 99.*
Quhair of the ane and the uther is necessar to him in the execution of his office, for with the sound or blast of the horne, he denuncis & the disobedient rebels: And also persewis malefactors, quha ar fugitive fra the Law, and rayfes the inhabitants of the Cuntrie, to concouir and assist in taking and apprehending of them. And with the wande, he relaxts them quha returnis to the Kingis obedience fra the horne, and receivis them to the Kingis peace, as I have said already in ane uther place. Likewise, all Schireffes, Stewardes, & Baillies, sul cause the meadows, serlands and officiaris, have ane signet conteing the first letter of thair name, quhaic with all letters and precepts extant be them, and indorفاتions be inot, sul be marked and standpet. *Y. 1. v. 6. c. 74.* The Schireffis serjant suld have for his fee of ilk amercianat or unlaw of court, ane colpin-deck, or threidis pouunies. *Leg. Malc. Mackie, and the 11. 11. 11.*

Schireff
Court.

gute and
presence.

George
Gibson

It is lawfull and necessary to the Schireffe and his deputes, to
holde sevylle courts, for execution of his office, whilkis, courts
ilk Schireffe be the auld law of his realme, is obllighed to hold
after the space of ilk fourny daies. *lib. 4. c. 5. Satzum. 19. Ass.*
ing. Dc. c. 2. sumeritons. 19. And now all Schireffes, stew-
ards, and Baillies shal drav thir thrid head bounis in the zeir, be
themselfe in proper person, except they have just and lauch-
full excusis of liknes, or of the Kings service. And all baro-
nes, and free-halders, wha lawfull and presense in the saids
courts, shall compair personally. And the absents shal be enter-
taiued, and all they wha a wibot suit olameithy, sal send their
sutors, honest and qualifid then, able to decide byng action
or cause. And all they wha cummis to the court, sal remaine
untill the sam be ended. And shall passe upon inquestes and
assises, and assit the Schireffe doing their office and service,
conforme to their iudgements. *ib. 5. p. 6. c. 7.* The Schireffe
in his court shal keipe and observe by forme and ordour of pro-
cessis, as is used before the Lordes of Councell and Session.
And he shal set his court peremptorily upon fifteene dayes,
c. 10. 11. and

and all precepis direc^to^rbe him to summond and warne the
parties, fulde be execute upon fifteene dayes. *Item. 1. par. 9. cap. 110. Iam. 5. par. 6. cap. 72.* And gif the in-dwellers within
the Schireffedome and Royaltie thereof, compeiris not in suffi-
cient number, or sends not their Attournayes to passe upon
servyng of inquestes or retours, twa that theirby the Schireffe
court is weake, and nocht well stufferd. The Schireffe may
warne the gentlemen of the regalitie, to compeir and enforce
his court, bur prejudice of their regalitie. *Iam. 1. p. 9. cap. 130.*
Item, all Baronnees, Knights, free-halders, and Stewardes of
Bishoppes, or Abbortes, and of Earles, fuld be present at the
Schireffe court, under the paine of the Kings unlaw. *Id. 4. c. 1.*
statutum 19. Assurg. da. c. 13. summons 18. All the saidis per-
sones, & uthers, quha cummis to the courte fuld come in sober
& quiet maner, with als monie persones, as they dally sustaine in
House-halde & familie, & beand come to their Judgynge, they
fulde weare an weapones, but their kniffe. And gif ony of them
dreadis boddie harme of ane uthere. The Schireffe fuld prane
him lawburrowes. *Id. 2. p. 14. c. 83.* & it is lesoun to the Schireffe
to charge all persons to come to his court in sober manner.
And gif they refuse to skail their gaderings, and conuocacion,
he may stay or continue the courte, and the persons disobedient,
fuld be punished be warding of their persones be the space
of ane zeire: and be payment of the expensis and damage
sustained be the partie, throw delay of justice. *Id. 3. p. 14. c. 104.*
And albeit all free-halders and uthers persones fuld cum
to court in quiet maner, as said is. Nevertheless, it is lesoun
to the Schireffe, Steward, Baillie, and uthers the Kingis offi-
cers, to ride with greater number, for execution of Justice, and
furth-setting of the Kingis authoritie. *Item. 5. p. 4. c. 27.* The The unlaw-
unlaw of the Schireffe in his courte, fuld not exceede the sum of Court.
of sixteene schillinges, and to his clerk, twa schillinges, and to
the seriand ane colpindach, or threttie pennies. *Leg. Male.*
Black. c. 2. ^{as in the 15. and 16. of his book, it is said, and so to be com-}

^{on.} The jurisdiction of the Schireffe consistis and standis gene-
rallie in divers and sindrie poyntes. Bot first of all it is to wit,
that the Schireffe his depute, and seriand, hes ⁱⁿ jurisdiction
of power ouer with the boundes of his awin Schireffe dome, to
summond or attaigh ony person, or to pound or take ane distres
of ony mans gudes and geare: For they fuld make faish that ^{they}

De verborum significacione.

The Schireffe suld
cause the
lawes be
proclaimed
and obser-
ved.

they shall faithfully serve the King, within their awin Schireffedome, and shal not trouble or molest any person within the samin, against law and reason. *Aff. reg. Dav. c. nullus 13. Quo. attach. c. nullus 57.* Swa it is manifest that the Schireffe has only jurisdiction, within his awin Schireffedome: Within the quhilke, he and his deputes suld cause the Lawes and actes of Parliament to be published, red, & proclaimed in his courts, and to be keiped and observed be our Soveraigne Lordes lieges, alswaill in the courtes of all Prelates, Earles, Barronnes, and uthers havand power to hald court, as in his awin Schireffe court, and suld give to them the copie of the lawes, that na man pretend iustlie ignorance thereof. *Stat. Rob. c. Robertus. 28.* And slike in all Burrowes of this Realme, the Schireffe shall cause twelve leill and honest men of the burgh, sweare and make faish, that they shall cause the Kings lawes be keiped and observed. *Stat. Alex. c. Item in orn. 25.* And to the effect the samin may be the better done by him, the acts of Parliament being registrar, suld be delivered be the Clerk of the Register to him: quhilke shall cause be proclaimed openlie, in the chiefe place of the Schireffedome, & suld give copies of them to Prelates, Barronnes, & Burrowes within his Schireffedome, baith to lande & to burgh, to keipe and observe the saides lawes and statutes, under the paine of deprivation of his office. *Iam. 1. p. 3. c. 67. Ia. 2. p. 14. c. 90.* And likewaies, to the effect the Schireffe suld see justice lauchfullie done and ministred: he suld be present in all courtes of Bishops, Abbots, Earles, Barronnes, and free-halders, to quhom it is not leasum to hald their courts, except the Schireffe or his deputes be presente, or summoned to that effect. *Lib. 4. c. die Luna. 14. Stat. Alex. assisa 10. Aff. reg. Dav. c. 1.* And slike, na Barron may hald court of battell, water or iron, except the Schireffe or his deputes be present to see iustice done. *Stat. Alex. c. præterea 28. vid. duellum. vid. mabamium.* And mair-over the Schireffe and all Judges within the Schireffedome, suld reparie and come to the King, the first night he cummis within the Schireffedome, to answer to all complaints maid against him, anent the noct-keiping and observation of the lawes, and shall not depart nor passe away licence asked reparie to and obtained, under the paine and unjaw of aucht Kye. *Aff. reg. Dav. c. statutum 20. Quo attach. c. statutum 80.* and also fall

The Schireffe suld
be present
in all
courtes.

The Schireffe suld
repaire to
and obtained,
under the paine
and unjaw of aucht Kye. *Aff. reg. Dav. c. statutum 20. Quo attach. c. statutum 80.* and also fall

fall not passe away fra the King, except he have with him the acts of Parliament, and his instructiones given to him in writ. *He suld not execute or obey un-
Aff. Reg. Da. ex libro Sconensi.* Last, concerning the execution and obseruation of the lawes, the Schireffe, nor na uther officer of the law, fall onie waies obey or execute onie command direct to them be the King, under the great seale, privie seale, or signet, repugnant or contrarious to law or reason. Bot gif onie sik precept be presented to them, they fall receive the samin reverently, write upon the back thereof, and remit the samin againe. *Rob. 2. 1372.* And of his reigne, the first zeire.

The Schireffe suld not onely make the publication of the lawes, and cause the samin to be keepe and observed: Bot also suld concur and assist with uthers to do the samin, sikh as the iustice generall, chalmerlane, and auditours of our Sovraigne Lords Checker.

The Schireffe at command of the iustice generall, suld summond certaine persons to burgh and land, to give up dittay to the iustice Clerkes, and suld be present in proper persone at the iustice aire, with the verification of the saidis summondades: As suld sustaine and paye the expenses of the iustice clerkes, in the time of the taking up of the dittay. Quhilk suld be allowed to him in his comptes, he suld (conforme to the iustice precept direc to him) summond all Bishops, Abbores, Earles, Barrones, Free-halders and all uthers quha aucht presence in the iustice aire, and are immediet vassals to the King, to compeir in the iustice court, to fortifie and assist the iustice. Likewaies he suld summond all persons indyted of now and of auld, all pledges obllished for the entrie of onie man in the aire, all persone quha will persue or defend in the said court, to compeir, do, and fulfill that quilk accordis of the Law. He suld be present in the court, with sufficient testimonie of the execution of the said summondades: And suld make provision for the iustice and his Clerkes, quhilk suld be allowed to him in his first compt in the Checker. He suld take up sik summes of money, and gif neede beis poynd therefore, as the iustice modifies to be payed be them, quha ar amerciait, or cums in will. *vid. Iser.*

Maist- over, gif there be onie persone, quhom the Crouner

may nocht, nor dare nocht arrest: He shall deliver their names to the Schireffe, quha shall be becums borgh and cautioners to enter and presente them in the justice aire. Or shall passe, or send sufficient number of men, to fortifie the crowner, making the arrestment, and bring the person arrested to the Schireffe to be keept behim. Quhilk gif the Schireffe faulzies to do, he shall pay ten pund to the King. Ia. 3. par. 14. c. 99. Because the Schireffe suld keip the persones arrested be the Crowner, and enter them to the justice aire, gif there be na Castell pertaining to the King within the Schireffedom, quhairin they may be keept. Ia. 5. p. 3. c. 5.

Moreover, the Schireffe or his deputes suld passe or send with the crowner and visie the gudes pertaining to all persones conuict in the justice aire, and deliver to the Crowner sa meikle thereof, as he suld have be the law, and intre the remanent to the Thesaurar. Ia. 3. p. 14. c. 102. And the last daye of the aire, the Schireffe suld thowill ane assise ardent the vising and execution of his iustice. Iam. 3. p. 14. c. 102. Finallie, the Schireffe or his deputes be their Clerke, suld intre bring to the Thesaurar, all extractes of the justice aire, and summes of money conteined there-intill: quhilk gif he faulzies to do, na allowance sulbe granted to him in the Checker of his comptes albeit he have the Kingis letter in the cothair, granted to him in his favours. *Aff. reg. Da. ex libro Seonensi.*

Chalmelaine is to hald his aire within ony burgh, the Schireffe be vertue of the Chalmelaines precept direct to him, suld attach and arrest without delaie; vnder sure pledges and cautioners, all them quhais names the provost and baillies of the Burgh shall give to him in wri; to compete before the chalmelaine, or his deputes, day, place and time of the aire, to aunswere to sixt thinges as shall belayd to their charge. At the quhilk court, and aire, the Schireffe and his deputes suld be present, bringand with them the saide precept and verification, or testimonie of the execution thereof.

Item. camer. c. 2. All Schireffes suld be examined zeirlic in ilk Checker, how thay have keipod the acts of Parliament, and how they have punished the transgressors thereof. For in the checker, the Schireffe, or an officie ex depute for him, haing sufficient power, suld compete and syare there anent, in *animam ejus*: *Vnde*

Vnder the paine of deuine punde and tisfall of his office at the Kingis will. *Affreg. Da ex libro Scovens. In the quibilk Checker, the Schirreffe shuld make compt and full payment, eqne with the rollis, sa far as he hes intromettet, or micht intromett with the Kingis propertie or easualties, sic as escheites and wardes, vnder the paine of waidering of his person.* *la. 5. p. 7. c. 96. Ia. 6. p. 11. c. 74.* And shuld bring with him his court buikes, with the compt of escheites and vnlawes, intromettet with be him, togidder with the registers of hornings, registre be him in his buikes, and of all sailings. *Ia. 6. p. 12. cap. 124.* And shuld finde cautioners, burges men with *Edinburgh*, acted in the buikes of Councell, that he shal zeirly make compt in the checker, and pay-men of all things intromettet with be him. *Ia. 6. p. 11. c. 80. Ia. 6. p. 14. c. 230.* And gif he be found restand at the fute of his compt onis summes of silver, to the King, or his Thetaurar: it is leasum to the Thelastar, as he pleash, to poynd the Schirreffe and his deputes, or the partie to quhem failing is given, for the saides summes, conforme to the buike of *responde*. *Iam 6. par. 11. c. 71.*

The jurisdiction and office of the Schirreffe, consistis alswa in particular civil aijones and pleyes, and decision the coif in his courte, and likewaies in execution of decrets given be ci-vill judges, sic as the Lordes of council, and session. The Schirreffe and his deputes is iudge competent to thir pleyes and actions after following, That is, the pley or mute of barrones betwixt bartron and bartron. The mure of *are* reasonable *Terex* perteyning to *wemen*, as lauchfull Wives, be reason of the decease of their husbands, complaintes tuiching the breaking of appoyntments, agreeances, and end of pleyes made in court, and not keiped. *Lib. 11. o. 4. c. contingit. 31. lib. 2. c. dos 19.* Mutes and pleyes of natives, that is, of bondes and servandes fugitive fra their awin masters, making of Homage, receaving of reliues: alswa actions and pleyes of debt auctrand bel ane to ane vther, may be followed before the Schirreffe, with other actions of wrang and vnlaw. *Lib. 11. o. 4. lib. 2. o. co. sequenter. 13.* The briue of richi and free tennentes shuld be determined before the Schirreffe, in the seconde instantie, quanhauas complaintis maid, that the coif of Barrones has done wrang therel anent, be reason wranges done in Barrone court, war roined in the Schirreffe court, be the Schirreffe-court, be the auld law of this Realme

Realme. Lib. i. c. placita. 6. lib. 3. c. solent 17. c. ad vicecomites. 19.

Bo to be the law & practick now used & observed, the Lordes of Councell & lession ar onely judges competent, baith in the first instance & second, to all actions and matters touching fee and heritage. Sic-like, all pleyes touching Meithes and Mar-

Molestationes, and cognitions. ches of landes, betuixe neighbour and neighbour, suld be decided and declared be an assise before the Schireffe. Lib. 2. c. v/s. Conforme to the quhilk all actiones of molestation, in troublance of the possession of propertie, and commontie suld be decided be the Schireffe of the Schire, or uther ordinar judge, quhair the lands lies, be the determination of an assise, of the best and worthiest of the cuntric, least suspect, and that beltknawis the veritie. Ia. 6. p. 11. c. 42. The Schireffe is

removing. judge competent to the removing of tennentes fra lands, conforme to the warning maid against them to that effect. Mar. 6. c. 39. The Schireffe is Judge to the brieve of inquest, quhair be ane desbris to be served and retoured narrest and lauchfull

Brieve of inquest. aire to his predecessor. Lib. 1. c. Generalia. 25. Quo. attach. c. De brevibus 31. Ia. 1. p. 9. c. 127. Quhilk brieve suld be served in plaine court, be the maist worthie of the Schireffe-dom, summond and called upon the promotion of fifteene dayes. Stat. Rob. 3. c. 1. vid. breve de morte antecessoris. And

Commis- fations. na commission for serving of the said brieve, or uthers suld be granted to ony preson, in preuidice of the Schireffe, Steward, or Baillie, untill he be first warned to heare and see the samin given, or else to al'eadge ane reasonable cause quhy the samin suld not be granted. Ia. 5. p. 6. c. 82. And in case any sik brieve sall happen to be served and retoured before ony Judge, commissioner, the precept of saising suld be direct forth of the

Chancellarie to the Schireffe, as is beforesaid, *verbis*; *breve de morte antecessoris*. For generallie all precepts of saising furth of the Chancellarie upon retoures suld be direct to the Schireffe, & uther Judges ordinar, with the clause, *Capiendo securitatem*.

Ia. 6. p. 12. c. 124. And all saisings passing upon sik precepts suld be given be them, their deputes and Clerkes. Mar. par. 6. c. 34. Quhairof they suld write the day and zeir of the gi-

ving of ilke samin, and bring the samin, togidder with all uther saisings, given be private Notare zeirly to the Checker.

Ia. 4. p. 6. c. 89. Ma. p. 6. c. 47. Ia. 6. p. 11. c. 65.

Sik-like, actiones of election and spuizie, perteinys to the schiriffe,

Schireffe, and his iurisdiction. And therefore, gif on man is wrangeouslie ejected furth of his land, or violently spuylzied, of his gudes and geare: The Schireffe fuld take cognition there-anent. And the election of spuylzy beand proven, sal cause him quha is ejected or spuylzied, to be restored to his awin lands, guds, and geare, with the profites thereof, and damage and skaith susteined be the partie. *Ass. reg. Da.c. stat. 31.* Speciallie gif the persons quha ar ejected and spuylzied, be religious men, Clerkes, Widdowes, aged persons, or fik v-thers, quha be the Law. ar excused fra singular battell. *Ass. reg. Da.c. stat. Alex.c. 5. stat. Ro. Br. 3.c. 6.*

And in elections, quhen ony man is ejected furth of his lands, fee, or heritage: The Schireffe at command of the Lordes of Session, sal furth with gar restore the grounde, without preiudice of onie partie, and recognosce the landes in the kingis handes, vntill they be lowsed be the King. And in the meane time, inquisition is taken be the Schireffe, quha was lauchful possessor of the landes: And the samin beand retoured to the King, the lands ar letten to borrh to the said person. *Ia. 2. p. 14.c. 64.* And generallie, the Schireffe fuld arrest, and put in the Kings ward, all maisterful and wrangeous occupiers of vther mens lands, and sal cause the grounde to be maid voide of them and their guds. *Ia. 2. p. 14.c. 78.*

Elections

Concerning spuylzie, the Schireffe fuld compel spuylziers, and their receipters (the spuylzie being proven) to restore their guds spuylzied, and charge them to answer therfore, as law will. And in-case they disobey, he fuld denuncie them rebelles, and put them to the Kings horne. Quhairin, gif he be negligent or partiall, he salbe punished as the principall spuylzier. *Ia. 2. p. 5.c. 10.* The like restitution fuld be maid be the Lordes of regalities, quhilk gif they do not, the Schireffe fuld cause the samin be done within the regality. *Ia. 2. p. 5.c. 11.* Last of all, actions of recent spuylzie may be persegued before the Lordes, or the Schireffe, within fifteene dayes nixt after the committing of the spuylzie. *Ia. 4.p.6.c. 65.*

Execution not onely of decreetes of election and spuylzie, as saide is, bot also of all vther decreetes perteinis to the Schireffe, be reason of his office and iurisdiction. For ane decree beand given against ony man, letters ar direct to the Schi-

Execution
of de-
cretes.

reffe of the Schire, steward, or baillies to burgh or to land chargeing them to put the said decreee to execution : quhilk suld be done be ilke ane of them, within their awin jurisdiction, and suld receive for their office and fee xij, d. For ilk li. recovered or conteined in the decreee, to be taken of him, against quhom the decret is given. And gif the Schireffe or vther officiar failzies to do the same, he sal tine his office for three zeires, gif it be heretale : and perpetually, gif he hes it in life-rent, or for ane certaine time, and sal pay the principall summe recovered to the partie, with the coasts and expences susteined be him. Iam. 4. p. 3.c. 30. Ia. 4. p. 6.c. 67. Likewise, all sentences and decreetes given be the Lordes of the session, suld be execute be the Schireffe of the Schire, or his deputes, quhair the party dwellis, against quhom the decret is given : or elsc be Heraulds, Purseavants, or Maisers : and for execution theirof, nane sal take mair nor is prescribed be the act of Parliament foresaide, except be liberalitie of the partie, vnder the paine of deprivation of their office. Ia. 5. p. 5.c. 58.

Poynding. For the better and mair reddie execution of decreetes : It is leasum to the Schireffe to poynde the guds and geare pertaining to the debtor, be the brieve of distresse : quhilk brieue perteinis to the Schireffis jurisdiction. Lib. 1. c. Placitum. 7. Quha suld cause execute the forme of poynding, and taking of distres. Quo. att. c. de brevibus. 31. Bot the Schireffe or vther iudge may not poynd ony man, or take ane distres, bot within his awin iurisdiction allanely; And gif he dois in the contrair, it is plaine riefe or spuilzie. Stat. Rob. 3. c. Item. stat. 13. And it is not leasith to the Schireffe, or ony vther iudge, within his awin iurisdiction, to poynd oxen, horse, or vther guds pertaining to the pleuch, or that labouris the grounde, the time of the labouring thereof, gif there be vther streinzieable gudes, quhilk may be poinded. And gif ony man will take ane poynd within the Schireffedome, he sal cum to the Schireffe or his deputes, and desire him to concurre and assit with him therewith. And thereafter the Schireffe or his deputes, sal passe with him to the house of the debtour, fra quhom the poynd suld be taken. And gif the debtor confessis the debt, and prievis payment thereof to be maid be him, or be vthers in his name; na poynd suld be taken. And gif ony is taken, the samin suld be delivered againe; vtherwaies, gif he grantis

grantis the debt, and proovis it not payed; the Schireffe suld take the poynd, and cause the creditor be payed. And gif the debtor denies the debt, the poynd fall not be taken fra him, except it be manifest, that the debt is auchand to the creditor; because na distresse or poynd suld be taken bot for debt confessed or proven. *Lib.4.c. Si quis namos. 30.* And gif the debtor hes na moveable gudes, or hes not sameikle within the Schire, as is equivalent to the debt recovered against him. And gif it happenis that he have some moveable gudes within ane vther Schireffedome: The Schireffe of the vther Schire, within the quhilk the saids moveable gudes lyis, fall cause the same to be poynded & comprised, & the creditor to be payed. And failzieing of moveable gudes, the Schireffe fall cauise the landes and immoveable gudes perteining to the debtor, to be conforme to the act of Parliament, and cause the samin to be fauld and annalied, to the availe of the debt, and the credi-
tour. *Ia.2.p.5,c.36.*

Diverse and hindrie criminall actiones, perteinys and be langis to the Schireffe, and his jurisdiction, quhairoffsome ar capitall, v'wers ar pecuniall, as after followis. And first, generally the Schireffe may follow and persew all trespassours in the Kings name, and cause his maires and seriandes arrest them, albeit na partie persewer compeir or assist. *Ia. 1.p.13.c. 139.* Like as the Thesaurar and advocat may persew flauchter, and vthers crimes, albeit the parties keip silence, or vtherwaies privately agree. *Ia. 6, p. 11.c.76.* And swa when ony complaint is made be ony person to the Iustice Generall, or to the Schireffe, or to ony vther officiar of law within burgh, or without the samin: The Schireffe, or vther judge, fall summond baith the parties: And gif the deede be done be Chaud-melle, the partie fall persew, as effeiris of the law. Bot gif it be done be fote-thocht-fellowie, the committer thereof sal be accused of the breaking of the Kingis peace: Hee fall satisfie the partie, and be impiisoned in the Kings prison: because his life and guds ar in the Kings will. *Ia. 1. p. 5.c. 51.* And gif ony trespassor be fugitive for ony crime, the schireffe suld persew and follow him: And ilk Gentle-man, not fol- and the schowteor out-horne, sal pay xl.s. And ilk zeaman xx. s. to the king *Ia. 1. p. 6, c. 28.*

Criminal
causes per-
reining to
the Schi-
ffe.

Murther The Schireffe, Crowner, or Prowest within Burgh, suld cause bury him quha is murthered. *Leg. Mal. Mac. c. 1.*

Witch-craft. The Schireffe suld punish Witches, Sorcerers, Necromancers, and them quha seekis helpe, response, or consultation of them unto the death, asw ell the abuser, as the seeker of the response, or consultation. *Mar. p. 8. c. 78.*

Messe The Schireffe and uther ordinar judges, suld search, take, and apprehend, all them quha not being lauchfullie admitted, dois minister the Sacraments, sayis Messe, or hearis the samin, to be brocht to the King, to be punished conforme to the Law. *Ia. 6. p. 1. c. 5.*

False cu-
inzie. The Schireffe suld take strait inquisition, of them quha strikis false or forbidden cuinzie, and suld cause them to bee brocht to the King, to be punished to the death. *Ia. 3. p. 2. c. 18.*

Slauchter The Schireffe beand certifid of slauchter, committed within his Schireffedom and royltie thereof, he fall incontinent rayse & follow the slayer, with sonnd of horne, & convocation of the Kingis lieges. And gif he beis apprehended withreid hand, justice fall be done within that Sun. And gif he be taken & apprehended without reid hand, he salbe put in prison, and law fal be done upon him, within fourty daies: & gif he escapis or flyis furth of the Schireffedom, the Schireffe fall certifie the nixie Schireffe thereof; quha fall perfew and follow the slayer, in maner foresaid. And consequently ilk Schireffe fall certifie uther, untill the trespassour be put toorth of the realme, or else brocht to justice: The like certification suld be maid be the Schireffe, to the Lorde of regalitie, quha suld perfew the malefactoures, as the Schireffe suld do. *Ia. 1. p. 6. c. 89.* *Ia. 3. p. 5. c. 35.* *Ia. 4. p. 3. c. 28.* Quhen the committer of slauchter cummis to the Girth: The Schireffe suld advertise the Maister of the Girth, and cause the slayer be put to the knowledge of ane Assise, quhidder the slauchter committed be him, was done upon suddaintie, or before-thocht felonie. And gifit be found suddaintie, be fall be restored to the libertie of the Girth & Sanctuary, And gifit be founde fore-thoucht felonie, he salbe punished to the death. *Ia. 3. p. 5. c. 33.* *Ia. 5. p. 4. c. 22.*

Law-bur-
rowes. The Schireffe suld not only punish committers of slauchter, as said is; bot also suld afcr his power, stay and stop the committing thereof: And therefore, quhen ony man hes doubt of his life, either be ony deede, menacing, or violent presump-
tion,

tion, and verifies the samin be his aith, or uther probation. And for that cause askis law-sovertie to be given to him be the Schireffe, that he fall be harmeles and skaithles of him of quhom he dreadis the bodily harme. The Schireffe suld grant his petition, and gif he refusis the same, he fall pay forty pound to the King, and assyith the partie. *Ia. 1. p. 9. c. 129. Ia. 2. p. 6. c. 13. Ia. 1. p. 14. c. 83.* And gif the law-borrowes happenis to be broken, the paine thereof suld be payed to the Schireffe, for the quhiilk he fall be comptable in the Checker. *Ia. 3. p. 1. c. 5.*

It is leasum to the Schireffe and his deputes, to perlew ony person for theft; albeit na partie concur and informe him *chere-ancz.* *Quon. attach. c. vbi aliquis 25.* As likewaies he is judg competent to theft and flauchter, quhen ony person compairis and insilis with him in the persute. Bet gif the faidis crimes be followed be way of dittray: the justice generall is Judge thereto. *I. 1. c. 2.* And quhen ony thiefe is condemned before the Schireffe, and execute for theft: all the moveable guds, quhilk perteine to him, suld justly perteine to the Schireffe. *lib. 2. c. Forisfaetum 55. de Iudic. c. Pratre-rea. 148.* Bot gif ony man findis in ony town, his awin silver stollen fra him: It is not leasum to him to intromet-there-with: bot he sulde put and leave the samin in the keiping and custodie of honest men of the towne, and sal declare the samin to the Schireff, quha sal compel the Provest or ruler of the towne, and three men with him, to make faith that hee knawis na-thing of that theft: and thereafter the compleiner proovand the silver to be his awin, suld receive the samin to be used be him, as his awin proper geart. *Lib. 4. c. Si quis 21. stat. Alex. c. assisa. 20.* All thieves suld be punished to the death: And it is not leasum to the Schireffe, to sell ony tiefc, or to fine with him for theft-done, or to be done, under the paine of life and gudes. *Ia. 1. p. 13. c. 135.*

All Sorners taken and apprehended, suld be delivered to the Schireffe, that Justice might be done upon them, as thieves & rievers. *Ia. 2. p. 11. c. 45. I. 1. 3. p. 10. c. 77.* The Schireffe suld arreist and challenge all torners, quha lyis & sojournis upon the Kings liege, and compell them to assyith the King, and the partie compleinated. And gif na partie compleinis, he sal inquire at the head court, aent lik trespasssoures: And as hee ony findis, suld punish them. *Ia. 1. p. c. 7.* And mairover, the Schireffe

Schireffe and all uther officiars, alsweil to Burgh as to land, sal punish forners, over-liars, maisterfull beggars, fulles, bairdes, vagaboundes, put them in ward, and banish them the cuntry. *1a. 2. p. 6. c. 22.* And all oppresflours, strang vagaboundes, beggars wandring aþhort the realme, upon pretence that they ar Schipbroken, or banished for flauchor uther odious crimes: And dissimulat thieves, and abulers, called *Ægyptians. 1a. 6. p. 12. c. 124.*

Sick like, the Schireffe suld arreist all idle-men, and put them in sure firmance, until it be knawin, quhairon they live, and take caution of them, that the inhabitantes of the cuntrie, sal be hamelesse and skaithlesse of them: And that they fall get maisters, or passe to crafts within fourty daies; quhairin gif they failzie, the Schireffe suld iaprison them untill they be punished at the Kingis will. *1a. 1. p. 3. c. 66.* Mair-over, the Schireffe suld compell idle men, to passe and labour for wages within Schippes, maid and prepared for fishing, of great and small fish, under the paine of banishment furth of the Schireffedome: quhairin, gif the Schireffe failzies, he fall pay xx. pund to the King, in the Checker zeirly. *1a. 4. p. 4. c. 49.*

All they quha are suffered to beg alandwart, suld have ane certaine takin given to them be the Schireffe. *1a. 1. p. 1.c. 25.* Vnder the pain of burning on the cheek, and banishment off the cuntry of the beggars: and of ane unlaw of L. s. to the King, to be payed be the Schireffe, in-cause he failzie in keiping of the premisses *1a. 1. p. 2. c. 42.* And mairover, the Schireff, Provest, & Baillies within Burrowes of roialtie and regalitie, sal pay ane Mark for ilk beggar that beis found beggand, except he be cruiked, seek, or weake. *1a. 4. p. 6. c. 70.*

And mair-over, the Schireffe suld suffer na beggar to beg within ony Parochin, bot only them quha ar borne within the samin. For ilk beggar suld be fustained within his awin Parochin, and suld have the marke thereof. *1a. 5. p. 4. c. 21.* And for punishment of strange idle beggars; all Schireffes and uther judges suld make prisons, stockes, and irones within Burgh, throwfaire townes, and at all Paroch Kirkes. *1a. 6. p. 12. c. 147.* And suld punish beggars, conforme to the act maid be *1am. 6. p. 6. c. 74.*

Tuilzies
and brea-
kers of the
Kingis
Peace.

To the jurisdiction of the Schireffe, perteinis to cognosce and decide anent strife, spulzies, strakes, woundes, and brea-
king of the Kings peace. *Lib. 1. c. 2.* And the Schireffe suld
take

tak inquisition anent the breaking of the kingis protection, and compell the breakers thereof to pay ten punds to the King, and assith the partie. Ia. I. p. 11. c. 134.

The Schireffe suld destroy veschelles, creilles, and vther ingines, quhilk stoppes Smoltes to passe to the Sea. Iam. 2.p. 14. c. 87. Ia. 3. p. 5. c. 37. He suld cause the measures and quantity of the cruves and zaires to be keiped in waters quhair the sea flowis and ebbis: To the effect the frie of the fish, may ascend and descend: and suld likewaies give up dittay to the justice, in his aire, upon slayers of Salmonid in forbidden time. *Stat. Alex. c. hac est assisa 27. Leg. burgh. c. hac est assisa 113. Stat. Rob. 2. Br. c. Item ordinatum. 12.* The Schireffe suld destroy, cast downe, and hald downe, all cruves within his boundes, under the paine of xx. pund to be payed to the King. Ia. 4. p. 2.c. 15. Mar. p. 8.c. 68. For the quhilk cause, speciall commission is granted to him. Ia. 6. p. 6.c. 85. Ia. 6.p. 7.c. 111. He suld execute the acts maid.anent herring and quhite-fish, and uptake the escheit of contraveeners thereof, and make compt in the Checker. Ia. 6.p. 6.c. 89.

The Schireffes suld hunt and slay the Woolfe, and her Hunting
of the
Woolfe. Quhelles, three times in the zeir; and all in-dwellers of the Schire, suld ryse with him, under the paine of ane Wedder. Ia. 2.p. 14.c. 88.

The Schireffe suld cause bow-marks to be maid for Ar-cherie, in ilk paroch, under the paine of fourty shillinges, to be up-taken be him to the Kingis use. Ia. 4. p. 3. c. 32.

The Schireffe suld punish all them quha schuttis at Deare, Schutting, Rae, or vther wild beasts, or wilde-fowles, with Culveringes, with fire, Pistlettes, or Gunnes. Ma. p. 4.c. 9. Not onely the Schireffe, warks. bot all judges ordinar, suld accuse at particular diettes, all them quha schuttis with Culvering, Croce-bow, at Da, Rae, Hart, Hinde, Cunning, Dowe, Herron, or fowle of riefe. Ia. 6.p. 1. c. 16. p. 7.c. 123.

The Schireffe, and all vther officiares, baith to burgh and to lande, at ilke Court, fall inquire quhat persones byis victuall, and haldis it to ane dearth: and declare their names to the King, that they may be punished as ockerers, and the victuall escheit. Ia. 2.p. 6. c. 23.

Mairover, the schireffe suld escheit all gudes quhilkis ar forestalled, cost, or arled be forestallers, and in-bring the twa For estai-
lers.
part.

Cruves &
fishings.

part thereof to the Kingis use; and the thrid part to himselfe,
Ia. 5.p.4.c.20.

And sikk-like, the schireffe suld punish, be confiscation of all
their moveable gudes, all them quha transports Nolt, Scheip,
or vther cattell furth of Realme. Ia.6.p.7.c.124. Ia.6.p. 12.c.

149.

The schireffe suld punish destroyers of planting of Wood-
des, Forrests, orchardes, broome, breakers of Dow-cattes,
cuuning aices, Parkes, stankes, zairdes; flayers of haire, ma-
kers of Mure-burne in forbidden time, and vther destroyers
of haining and policie. Ia.6.p.6.c.84. And likewaies, suld in-
bring to the Kings use, the paines of them quha plantes not
wooddes, inakis not hedges and haining. Ia.5.p.4.c.9.

Fute-ball.

The unlaw offourty shilling, suld be taken vp be the Schi-
reffe, fra players at the fute-ball. In-case the Lord of the land
permit to do the samyn. Ia. 1.p.1.c.17.

Caution
found be
the warda-
tar and v-
thers.

Quhen ony landes fallis, be reason of warde in the Kings
hands, or of ony vther superiour : Or quhen to burgh or to
land, lands ar given in conjunct-fee, or life rent, The Schi-
reffe, or the Baillies, sal cause the wardatar, finde caution not
to destroy the bigginges, or vther policy : and that he fall su-
steine the aire, not havand sufficient blench or few ferme
landes. Ia.4.p.3. c.25. And gif the Schireffe, or vther jude
be negligent, in requiring caution, being required thereto, be
the heretour or his friends : he fall rounound and pay to the be-
retour of the lands, at his perfite age, all damage and skaith
sustained throw his negligence. Ia.5.p. 4.c.14.

Claithing

The Schireffe suld take inquisition of them quha wearis
Claith of gold, Silver, Velvet, or silkes: contrair the actes of
Parliament, and send them to the King to be punished. Ia.3.p.
6.c.45. Ia. 6.p.7.c.113.

Banqueting

Al they quha vvis excesse or superfluity in banquettis, con-
trair the tenor of the act of Parliament, suld be punished be
the Schireffe and vther Judges within the Royalty and rega-
lity, Ia.6.p.7.c.118. And sikk-like, the Schireffe suld send to
the Thesaurar, the names of all persones quha breakis and
contravenis the act of Parliament maid anent the ordering
of ilk mannis house and quantity of meat and dishes, prescri-
ved to ilk man of all estaites, that they may be accused and
punished therefore. Mar.par.5.cap.26. The Provest and Bail-
lies

lies within burgh, fuld cause Hostellares take reasonable price for ane mannis dinner and supper, efferand to the prices of victualles. And fuld also set downe reasonable prices upon ilk mannis warke, and fuld deliver the samin to the Schireffe, that hee may cause the samin price be keiped to Landwart. Mar. par. 5. c. 22. Mair-over, the Schireffe fuld punish the Barronne, quha examinis, nor prices nocth the wark-man-ship of ilk craft within his Barronnie, with the paine and vn-law of ten pounds. Ia. 1. p. 7. c. 102.

Crafte-
men.

Taxation

The Schireffe fuld sende or bring a'l Notars, quha are Temporall men, within the bounds of his office, and present them to the Lordes of Councell, to be examined be them, quhidder or nocth they be worthy or qualified for the office of the Notarie. Mar. p. 5. c. 24. And the Schireffe, with six persones as the King pleasif to joyne to him, fuld call all Notars before him and examine them. Ia. 4. p. 6. c. 75.

The Schireffe fuld take and inbring all taxationes, and make comptand payment thereof. Ia. 4. p. 2. c. 9.

The Schireffe with the Barroine or Lord of the lande, fuld see and provide that ilk man be armed according to his estait & rents: and fall cause weapon schawinges to be maid zeirly, after the Octaves of Pasche. *Stat. Rob. 2. Br. c. Ordinatum. 27.* Or at the least four times in the zeir, *Iam. 1. p. 2. c. 44. Ia. 4. p. 3. c. 31.* Or upon Thurfday in the Whitsunday oulk. *Ia. 4. p. 6. c. 75.* Or twise in the zeir throw all the Realme, in the Moneths of *Inuyn* and *Octobre*, or ony uther day, as fall please the Schireffe, steward, or Baillie. Ia. 5. p. 6. c. 85.

The Schireffe fuld execute the acte of Parliament, anent Victuall, the keiping or threshing out of victuals, and cause the samin to be keiped and obeyed, under the paine of tinsel of his office, induring the Kings wil. Ia. 2. p. 9. c. 37.

The Schireffe and Chalmerlaine, fall cause all mettes and measures to be keiped, used, and observed, conferme to the tenor of the acts of Parliament, as they will answere to our Soveraine Lord. Ia. 3. p. 4. c. 22.

Mettes &
measures.

The Schireffe and his deputes fuld escheit and intromet with all horse perteyning to Earles, Lordes, Barronnes, and vther, halden at hard meate, langer nor the tyme prescrived in the acte of Parliament. Of the quhilk escheit, the ane halfe perteinis to the king, and the vther halfe to the Schireffe Ia. 6. p. 11. c. 56.

Horse.

T

De verborum significatione.

Escheittes

The Schireffe at command and direction of the Thesaurar, fuld tak up, and intromet with the escheit guds and geare perteining to rebelles. Ia 6.p.6.c.75.

Excom-
municat
persones.

Divers and sondrie persons ar disobedient to the Kings lawes, baith civil and criminall, and also refusis to obey and fulfill lauchfull decreits given and pronounced against them, be Judges Ecclesiasticall, civill, and criminall: for the quhilk cause, some ar excommunicat and cursed, vthers ar denunced rebels and put to the horne: and therefore the Schireffe (to quhom perteinis the execution of the Kingis Lawes and decretes) fuld take and apprehend all cursed and excommunicate persons, at the desire of the Bishop, or his official, and put them in prison, vntil they satisfie God and the Kirk. *stat. 2. Rob. Br. c. Rex tali 31.* Speciallie them quha hes remained vnder the censure of excommunication, be the space of forty daies. *Quon. att. c. Rex tali 76. stat. Rob. 3.c. Item 7.* To the quhilk effect, letters of caption being direct to the Schireffe, he fuld execute the samyn against all cursed persons. And gif they be fugitive, their guds and lands, gif they ony have, s. ll be comprised, for satisfaction of the party. And gif they have nane they falbe denunced rebels. *Ia. 2.p.5.c.12.*

Rebelles.

All Schireffes, Stewards, Baillies, and vther officiares, baith to burgh and to Lande, fuld search, seeke, and apprehend all rebelles beand at the horne, and bring them to our Soveraine Lordis justice, to be justified, conforme to their demerites; under the paine of tinsell of their office for three zeires, gif it be heretale; and in all time coming, gif it be Temporall. And mair over, to be accused for their negligence in the justice aires, or at particular diettes, as it sal please the King. *Ia. 5.p.7.c.94.* Mair over, the Schireffe, and all the saidis judges, alsweill within regality, as royltie, fuld search, seeke, follow, persew, apprehend, and commit to warde, and present to justice, all declared traitors and rebellse, contempnandy remainand at the horne unrelaxed; and doe iustice upon them, gif they have commission to that effect. And gif the said rebelles be fugitive, the Schireffe and vther judges foresaid, fuld make denuntiation thereof to the Schireffe, and judges Ordinar, of the four halves about, & require them to use the like diligence, under the paine to the quhilk the traytours and rebelles ar subiect, or hes incurred. *Ia. 6. p. 12. c. 124.* And furder, the Schireffe

Schireffe suld concur and fortifie uther officiars, to take up the escheit of rebelles, and suld make convocation of the Kings lieges to that effect. Ia.6.p.6.c.74.

Mair-over, all letters of horning, with the indorsation thereof, suld be registrat be the Schireffes Clerke, within fifteene daies, after the denuntiation. And being marked and subscribed be him, suld be delivered to the party. And sik-like, all relaxationes suld be registrat in the Schireffes buiks, within fifteene daies after the publication therof. Ia.6.p.6.c.75. Ia.6.p.8. cap.142. And ilk Schireffe suld cause proclame the names of the rebelles, at the mercat croce, of the head burgh, upon market daies, preceding the three head Courts, and fixe ane Catalogue conteinand their names upon the mercat croce, and in the Tolbuith: And send ane uther roll thereof to the Thesaurar, conteinand the names and causes, for the quhilk they were denunced. Ia.6.p.6.c.74.

Last of all, to the effect, that they quha are in *Bona fide*, be not deceived in bying of landes or gudes, fra them quha ar interdicted or inhibit. For eschewing of sik fraud, the Schireffe, *Tanquam bonus prator*, suld cause all inhibitiones and interdictions, with the executioners thereof, to be registrat in his buikes, be his Clerke, within fourtie dayes, after the publication of the samin. Ia.6.p.7.c.118.

Quhat is the jurisdiction and office of ane Schireffe, may be easelie knawin be the lawes and constitutiones abone written: quhairof sindrie conteinis certaine speciall paines to be enioyned to him, for his malice or negligence. And now I thocht gud to declare, certaine generall penalties, prescribed be the lawes of this realme. And first, the Chancellor, Justice, Chalmerlaine, Schireffe, nor nane of their deputes or substitutes, fall susteine or mainteine pleyes, quarrells, or actiones, nor fall not take lands, or uther budde or rewarde from the partie, for hindrance or delay of Justice. And gif ony fall happen to be convict thereof, he fall be punished at the Kingis will, and fall tine and forefaul't his office, induring his life time. *Stat. 2. Rob. Br. c. Dominus Rex. 22.*

Secondly, in the time of King David the second: Because the haill communite and inhabitantes of the Realme, complainand heavily upon Schireffes, Maires, Seriandes, and uther the Kingis ministers of the Law: It is statute and ordained,

Of the
paines and
punish-
ment of
Schireffes.

that incontinent before the end of the Parliament: The iustice Generall, with the Chalmerlaine, suld call, and conveene before them, and the inhabitantes of ilk Schireffedome, all and sondrie the Schireffes, and uther Officiaries, alswaill heretale, as Temporall, and deputes: And taxe and modifie the damage and skaith done be them to the King and his lieges, to ane certaine summe: Quhilk taxation being maid, the Schireffe and uther officiaries, suld be put to the knawledge of ane gud and sufficient assise: And being found culpable, and convict, they suld incontinent be put in the Kingis prison, untill he, with advise of his Councell declare his will. And mairi- over, all the saidis Schireffes and other officiars, either heretale or Temporall, being fild and convict, suld forefalt, and tine their office, induring their life-time. *Da. 2.* In his Parliament haldan at *Perth.* 18. *Feb.* 1369. And of his reigne the 40. zeire.

The Schi-
reffe may
bee remo-
ved be the
Iustice, or
punished
be the
three e-
staites.

Thirdly, the Iustice Gentrall, in his iustice aire, shall chal- lenge and accuse the Schireffes and uther the Kingis officiars, and take cognition how they have used and exercized their of- fices. And gif ony of them be found culpable or faultie; the iustice shall remoove him fra his office, untill the nexte Parliament, and shall put ane uther in his place, to use the office in the meane time. And mairi- over, the iustice shall take sufficient so- veity of him, under certaine paines, that he shall compeir the nexte Parliament to underly the determination and punishment to be inoynd to him be the Parliament, for his fault; and he shall na wais be restored to his office, bot gif the three Estaites think the samin expedient. *Stat. Rob. Br. 3. Ex libro Sconensi.*

Schi-
reffe
heretale
and
Tempo-
rall.

Fourthly, gif the Schireffe, or ony uther officiar of law, be lauchfully proven, or notourlie knawin faultise or neg'igent in the execution of his office pertaining to him in fee and he- retage, he shall tine the samin, and all the profites thereof, for ane zeir and day, and falbe punished in his person and gudes at the Kingis will, after the qualitie of the trespassse. And gif his office is Temporall, he shall tine the samin, for all the times he hes it; and uther waies shall be punished, as said is. *Ia. 2.*

p. 14. c. 77.

Fifty,

Fiftly, gif the Schireffe or ony judge Ordinar, will not execute his office, and minister iustice, he shall be punished, and put fra his office, for ane certaine time, after the discretion of the King and the Councell, and punished at the Kings will, ^{linsell of honour & fame.} and pay the expences to the partie compleinand. And gif he be found partiall or culpable in the administration of iustice, and is Schireffe in fee and heretage, hee shall tyme his office for three zeires. And gif he be Temporall, havand his office for ane certaine time, he shall be put fra the samin perpetually: pay the expences to the partie offended, and punished in his person, at the Kings will. *Ia.* 3. p. 5. c. 26.

Sixtie, all Schireffes, and uther Judges, alsweill Spirituall as Temporall, within regalitie and royltie, shall do trew and equall iustice to all the Kingis lieges, without ony partiall counsell, or taking of buddes, under the paine of tinsell of their honour, fame, and dignitie. *Ia.* 5. p. 7. c. 104.

Gif ony partie complainis upon the Schireffe, that he has done to him wrang, in giving and pronouncing ony sentence or decret against him: and desiris the samin to be extracted & delivered to him, upon his expenses: The Schireffe shuld give and deliver the processe, led and deduced before him to the partie, upon his expenses: and shuld take fourte pennis for ilk acte allanerly. *Ia.* 4. p. 6. c. 67. At the least, he shuld extract processe, decreets, give faisings and retoures, at reasonable prices. *Id.* 6. p. 12. c. 114.

Extract of processe.

ΠΑΡΑΙΝΕΣΙΣ ΑΔ ΙΒΔΙΚΕΣ.

Omnis qui judicare debet, Stat eram in manu teneat: Nam aequalia & sine personarum exceptione esse debent judicia. Nihil iniquius quam munera capere in iudicij: Quia munera excacant corda prudentium, & subvertant verba iustorum. Quia enim Bilance iudicabitis, eadem iudicabimini. Quapropter, tuus iudex, timeas Deum iudicem; ne forte eo iudicante, damneris. Stat. Wilh. cap. 27. Preinde sis Deum honorans & timens: Sapiens & in scientia potens: Veritatem sequens & amans: Avaritias odiens & detestans. de Marit. ag. c. 2. Cave iustitiam subvertas odio, per quod inventa aliqua malitiosa cautela, contra partem tibi exosam, reddis iudicium indirectum; vel cupiditate, dum corruptus muneribus, malitiosè iudicabis: Vel timore, dum mutu potentioris, vere iudicare non audes: Vel amore, dum causa amicitia defendis amicum, & suppressis inimicum. de Marit. ag. c. 4. Facias igitur iustitiam aequaliter, tam pauperibus, quam divitibus. Stat. 2. Rob. Br. cap. 2. Quia omnes judges & magnates, qui plus favent his quam illis in iudicio, aut malefactoresullo modo manu tenent, sunt falsi, & perjurati contra Deum, Regem & populum regni. Leg. Mal. Mak. cap. ult. in fine.

Scotia, Sum-time signifies that part of Scotland, quhilk is on the North part of the water of Forth. *Aff. reg. David. c. statuit. 21.* And is opponed to *Lodoneium*, quhilk now we call *Londane*. For King *David* the First, in the third zier of his reigne, *Ann. Dom. 1126*. Be his Charter maid, *Omnibus Scottis & Anglis, tam in Scotia, quam in Lodoneio constitutis*, gave and dispensed to Saint *Cuthbert* and his Monkes in *Durham* (*Dunelmensi Ecclesia*) The lands of *Coldingham, Lummesden, Reningtoun, Eiton, Fissweik, Auld Cambus, Swintoen, Pend e geist*, and uthers, lyand in *Lodoneio*, quhilk now lyis in the Mers, and Schireffedom of *Berwick*. And in the actes of Parliament, justices generall ar ordained to be ane or twa on the South side of the water of Forth: And ane or twa on the North side thereof. *Iam. 3. p. 14. c. 97.* Quhilk agieis with the aet maid be King *James* the Second. *p. 3. c. 5.* Quhair it is statute,

statute, that the iustice on the South side of the Scottish Sea, set their Iustice aires, and hald them twise in the zeir. And also on the North side of the Scottish sea, as auld use and custome is. And in the Lawes of *Malcolme Mak-Kenneth. c.*

4. *Mare Scotia.* is taken for the water of *Forth.*

Sectator. Ane toytor in court, quhais qualities and office. *vid. verb. Sock.*

Sek. Of wooll, and furing of guedes be the seck, serplath, and tunne. *vid. Serplath.*

Serianteria, Sergenteria. Lib. 2. cap. Dicitur autem. 72. In the quhilk place, *pro Serianterijs, mendos legitur, Suggestoribus.* *Serianteria, à seriendo, as ministerium, a ministro, or servitium a servo:* Signifies ane maner of halding of landes, specially in the Lawes of England, quhair *Grande serjantye,* is quhen ane man haldis his landes of the King. For the quhilk he sulde passe with him in his hoist, or to beare his banner with him in his warres: Or to lead his hoist or armie. And hereto belangis warde, mariage and relieve, quhilk is ane maist speciall Knichts service. *Petie Serjantye,* is quhen ane haldis his lands of the King, yeelding to him ane knife or buckler, an scheife of arrowes, ane bow, or uther sik service, conforme to his infestment: *Quhairunto na waies belangis wardme, ariage, or relieve, quhilk we may call blench-ferine, or alba firma.* Read the statute maid be King *Edward the first, King of England. 18. zeir of his reigne, anent wardes and relieves.*

Serjant, Sergeant, ane French worde. For like as messengers coms fra the French word *Messiers:* Swa Sergeant like-waies cumbs fra *Sergent,* *Quae est vox composita, de Serrer, quod est includere, & gent, quod pro gente, plebe, vel populo usurpatur.* *In que Serjandus dicitur, qui iussu magistratus, quemlibet de populo reum criminis, in carcерem coniicit, seu includit.* That is, he quha at commande of the Magistrate, inclusis, or lockis in prison, guiltie persones delated, or suspect of ony crime. *Serjandus curia, or serviens curia,* the Serjant of the court, officiar, executor of letters or summondies, quha bee the interpretours of the civil law, is called *Nuntius. vid. Recordum.*

Serplath. Iam, 1.p.2.c.38. Iam.2.p.14.c.68. Contenit four-score stanes, For the Lordes of Councell in *Anno 1527.* de-gudes. Three
manner of
furing of
gudes.
de
cined

cerned fourre serplaithes of packed wooll, to conteine sextene-score stanes of wooll. Be the traffick of merchandes now used, The merchands usis to pay fraucht for their guds to Flanders be the Sek, To France, Spayne, and England be the Tun: And to Danskene, and the Easter Seas, be the serplath.

As I understand, ane Serplath of guds, is onely counted betwixt merchand and skippers, for furing of gudes to the Easter Seas, and fra thine hame to this realme. Swa that for every serplaith of gudes fured, or promised to be fured Easterward, the skippers is obliſhed to fuir hame to this realme, twa last of gudes: And this Serplaith of gudes is of na greater quantitie, nor the sek of gudes to Flanders.

And ilk sek, be the act of Parliament. Ia. 6. p. 7. c. 108. fuld conteine twentie fourre stane of wooll: and be the dailie calculation of merchandes, fourty Trois stane. Ilk Trois stane, conteines sixteene pound Troys. And ilk pound weicht theirof, conteiniſ ſextene ounce Trois.

The sek of wooll, is commonly ſet be the skippers to ane tun: ilk tun conteiniſ ſex hundredth pund Trois weicht. Ilk hundredth weicht, conteiniſ five ſcore pund weicht, quhilke is ſex stane, and ane quarter Trois.

The wooll, quhen it is bocht be merchands, is bocht be the Trone stane, quhilke conteiniſ commonly xix, pound and ane halfe Trois. Alwaies concerning the sek of wooll, I find na ſolide or conſtant weicht thereof: For ſome ſeckes will be mair, and ſome will be leſſe nor fourty Trois stane: Bot commonly the ſecke of wooll, conteiniſ fourtie Trois stane, as ſaid is.

Ane last of guds fured hame, conteiniſ commonly twelve Barrelles, and the auld forme of furing of gudes, fra Danskene to this Realme, was for every serplaith, as it is zit; twa Laſte. Bot for this Laſte, the skippers fuiris hame, xiiiij. barrelles, Ilk Barrell being of weicht, ane ſchip pund. And of licht guds, ſik as lint and hempt, there is fured for the serplath, twa Laſte.

Ilk Laſte is twa packes: And ilk pack is als great als halfe ane sek of wooll ſkinnes, and conteiniſ in weicht threttie ſex ſpruſſe ſtanes.

1. Serplaith.

2. The Sek
Trois
stane.Seck of
wool.
Tunne
Hundredth
weicht.
Trone
stane3. Futing of
guds be
the last.
Barrell.

Pack.

Ilk

Ilk sprusse stane, conteinis 28. pound Trois weicht.

Swa the last exactly weyed, will conteine of our Treis weicht, sex score sex stanes, and for ane last of walx, that is fured hame be strangers, fourteene schip pund. And be Scottish Skippers, twelve schip pund. Also of Tar, pick, and sik-like wares, twelve great barrels for the last, and fourteene small Barrels. Thit great barrels, are called Hamburgh trees, and are in greatnesse not unlike to our Salmond trees, and fuld conteine fourteene gallons, and the sinal barrels, are somewhat greater, nor our Herring-trees.

Likewaies of Rye meill, sometimes twentie fourre barrels ar fured for the last, specially be strangers: and be our awin Skippers, aughteen barrels for the last thereof. And ane last of Rye, is some-time aughteerie bols, and sometimes nineteene bols in measure.

Item, ten seckes of wooll, makis ane last of wooll.

Likewaies, ten hides makis ane daiker, and twenty daiker, Daiker, makis ane last. Twelve dowzanie of glooves, or ledder points, makis ane grosse: and ane great grosse, conteinis twelve fin-
gle grosse.

Ten stane of brasse makis ane barrell.

Sex barrels of English drinking bere, makis ane tun: Barrell of
Twelve barrels of Salmond are bocht be the merchands for Brasse:
the last: Bot in furing of them over the sea, the skippers countis Laft of Sal-
only nine barrels for the last. mond.

And likewaies the seck, albeit it be counted in Flanders Flanders bar-
to twelve barrels, zit twelve of their barrels conteinis sexteene rell.
commoun barrels.

The Fidder of lead, conteinis neareby, sexscore and aucht Fidder of lead.
stane. Schip pound.

Ane schip pound, conteinis sextene stanes and ane halfe, of
Scottish Trois weicht.

Sexscore of skins, is reckoned to the hundredth.

As likewaies, sexscore elnes of woollen claih is counted for
ane hundredth. *Jam. 6. p. 7. c. 108.* Quhilk is conforme to the
auld use, observed in the daies of King *David the second*, as is
manifest be the custome compt, maid be the Customet of the

Burgh of Striviling, the zeir of God, ane thousand, three hundreth, sixty acht zeires.

Weichtes and measures in Orknay.

THe Malt, Meale, and Beare, are delivered in *Orknay*, by weight in this manner. *Imprimis*, 24. marks makis ane setting. *Item*, six settings makes ane mail. *Item*, 24. meales makis ane Last. *Item*, of Meille and Malt called *Coift*, ane last makis ane Scottish chalder: *Item*, ane last and a'ne halfe of beare containis 36. meales, 36. meales makis ane chalder. *Item*, the butter is delivered in Barrels, quhair the quantity is great, bot qshair the quantity is small, it is delivered in marks and leib pounds: That is to say, 24. markis makis ane setting, as said is: And six settings makis ane leib pound. *Item*, ane stane and twa pound Scottish, makis ane leib pound. *Item*, 15. leib pounds makis ane barrel. *Item*, 12. barrels, makis ane last. *Item*, the flesh is delivered be apprising, *viz.* 10. meales makis ane sufficient Cow, and ane sufficient Oxe. Also, ane gild Oxe is apprised to 15. meales, and ane Wedder is four meales. *Item*, ane Gouse is twa meales. *Item*, ane Capon is halfe ane Gouse, *viz.* ane meale.

Servicium militare, Knichtes-service, and specially concernis ward and relieve. *Vide Serjantaria*. *Vide Hambert*. *Vide Ward*.

Serviens Curia, serjandus curia. *Leg. Mala*, c. 3. An serjand, or officiar of Court, the executour of summonds, quha summondis and attachis ony person to compair in ane Court, to aunswere to ane uther, conforme to law and reason. *Molitans in stilo super cur. par. 1. c. 20.* Quha is called *serviens*, because he suld sweare to serve lealely and trewly the King, in execution of his office. *Quon. attach. c. Nullus 57.*

Setter-dayis sloop, stat. Alex. c. hac est. Affisa 27. Leg. Burg. c. hac est. Affisa 1.13. Jam. 1. p. 1. 26. Maii, c. 11. Jam. 4. p. 2. c. 15. quhilk statute maid, as is alleged be King Alexander, is ascribed to King David, be King James the fourth, in the place fore-said: The Setterdayis sloop is ane space of time, within the

the quhilk it is not leasum to take Salmond-fish: that is, fra the tyme of Even-sang after noone on Satterday, untill the rising of the Sun on Monday, stat. 2. Rob. Br. c. Item ordinatum 12. stat. Rob. Br. t. 8. Leg. Forrest. c. Omnes aqua 85. Iter. Camer. c. calumniabuntur 16.

Siminellus, Leg. Burg. c. 122. From the Latine word, *Simile*, quhilk signifies the best and smallest part of the Quheat or floure, quhile bread, or main-bread: In the quhilk signification, in the Dutch tongue, it is commonly called *Semzell*.

Sok, Lib. 1. cap. 3. Ane auld word used in Chartoures and infestments, quhilk in sondry auld buikes containand the municipall Lawes of this Realme, is called *secta de hominibus suis, in curia, secundum consuetudinem Regni*. Swa after my opinion, he quha is infest with *Sok* (quhilk now we call *Soyte*, from the French word *Suite*, h. c. *sequela*) has power and liberty to hald Courts within his awin Barroonie or lands: In the quhilk Courts, *homines sui*, or his vassals fuld give *Soyte*, and send for them, ane quha is called *Soytor*, or *Seccator*, a *se-
quendo*: Because he fuld follow the Court, in the quhilk hea fuld compeare. This office was very profitable, for furthering of justice. And first, he quha is obliſhed to give *Soyte* in the Court of his Over-lord, fuld doe the samyn, conforme to the tenour of his infestment, and na uther-waies. Leg. Forrest. cap. nullus 68, cap. *Si hereditas* 69. And gif he aucht three *Soytes* Three *Soytas*, be his infestment: he fuld compeare bot at three head Courts in the zeire, without Summons or warning. *Modaten*. cur. cap. 1. cap. 13. Na Judge aucht of law, or of reaon, to except ony man in Court as *Soytour*. Bot gif he can make sufficient and lauchfull report of processe, doomes, judgement, and in lauchfull forme, give and pronounce doome of Mutes, and pleyes in Court, followed and defended before him in Court. *Modaten*. cur. cap. 38. *Quoniam attach*. cap. *Nullus seccator* 20. And ilk *Soytour* before he be admitted be the Bailly or Judge, fuld be examined in three Courtes, gif hee can make records of the Courts, and give sufficiently ane ward, or ane doome of wards or doomes, asked in the Court or not. And then quhen hee is be his fellowes admitted, hee may not afterward for weaknesse

The aith of
ane Soytour.

The Soytour
unlaw is the
absents.

Falsing of
doomes.

nesse of knawledge be rejected. *Quoniam attach. nullus 20.*
 Ane Soytour, is obliſhē to make faſh, that he ſal lealely and trewly make record of Court, thanis of the claime, libell and proceſſe, and ſall pronounce lauchfull and trew ſentence, according to the knawledge given to him be God; And ſall after his understanding, lealely and trewly ſerve, induring the time of his office. *Stat. Gild. c. 50.* The Court beaſd fenced, the Serjand thereof ſal call the Soytes, and defalt the abſents, that are not lauchfully eſſoynzied: And gaſane Soytour of the Court, deeme them in ane unlaw, with the conſent of his felowes and Colleges. *Mod. ten. cur. c. 1.* Be the auld law of this Realme, and actes of Parliament. *Iam. 4. p. 6. c. 95.* Doomes and decreetes given and pronounced be Soytours, in ane inferior court, was falsified and reduced in ane ſuperior Court, as the proceſſe of brieves wrangouly deduced in Barron Court, was falsified in ane Schireffe-court, and doomes given in the Schireffe-court, was falsified in the Justice-court. *Lib. 2. c. Dos dnobis 19.* And laſt of al, doomes pronounced in the Justice-court, was falsified in Parliament before the Lords, called *Auditeores querelarum*, in this maner conteined in the Register, 7. Octob. 1476. *Datum fuit judicium infra-scriptum, per os Alexandri Dempſter, judicarii Parliamenti, in preſenſia Serenissimi Principis Iacobi tertii, S. D. N. Regis, cum corona in capite ſuo, & ſceptro in manu ſeden, in Cathedra Iuſtitia Parliamenti, sub hac forma:* The Lords chosen be the three Estaites of this preſent Parliament, upon diſcūlping of the doomes, delivers and declaris; that the doom given in the Justice aire of Edinburg, the 12. of July laſt by past, be the mouth of Andrew Blackford, Soytour, for the lands of N. for John N. and Ione M. his ſpouse, and againe called be David Balfour of Caraldſtoun, foreſpeakeſer for Archbald N. was evil given, and weil againe ſaid: For diſerſe reaſons ſchawen and understand to the ſaidis Lords: And therefore ilk ſoytour of the ſaid doome, and their lords, ilkman be himſelfe, is in ane amerciament of the Court of Parliament, ſik as eſſeiris to be taken in the Justice aire, and in ane unlaw of the ſaid Justice aire for them: And in ane unlaw of Parliament amang them, al ſik eſſeiris of the Law: and this I give

give for doome. Swa it is manifest, that in all Courts inferior to Parliament, the soyours pronounced the doome. And gif the doome given be them in ane Barron-court, was falsified in the Schireffe-court : All the soyours payed bot ane unlaw. Bot gif the doome given be them in the Schireffe-court, was falsified in the Justice-court, ilk soyour payed ane unlaw of ten pounds, of the quibilk diversity, the reason is conteined in *Quon. attach. c. quilibet 7.*

Sokmanria, or Soccage, is ane kind of halding of lands, quhen ony man is infest freely, without ony service, ward, relieve, or mariage, and payis to the Maiter ilk dewty, as is called, *petit serjantie*. Or quhen ane haldis his lands in the name of Bur-gage, or in *Libera Eleemosyna de Maritag. c. 1.* *Soccamannus*, is called ane vassal, or Free-halder, quha haldis his lands in maner foresaid, or in blench ferme, *sive nomine alba ferme*: *Et opponitur militi, qui tenet per servitium militare*: That is, by service of ward and relieve: *Lib. 2. c. Si quis plures 30. c. Et bare- des 41.* And in *Magna Carta of England. An. 5. 1. Hen. 4. c. 27.* Mention is maid of sundry formes of halding, *viz.* Free-ferme, Burgage, Soccage, and Knight-service. Reade the Statute maid be Edward the first, King of England, the 18. yeire of his reign. Uthers alleagis, that *Soccamum cum cum fra Socco, sive Aratro*, affirming that Soccage is properly, quhen the tenent is bound and obllished to cum with his pleuch to teil and labour ane pairt of the Lords lands. Concerning tenures, and diverse halding of lands, reade the Treatise written be *Littleton*.

Stallangiatores, *a stallo*, Cremers, or Fortaine merchandes, quha within Burgh, in the time of Faire or Mercat, payis certayne dewty for their stal or stand, in the quibilk place they sel their merchandise: For it is ordained, that ilk stallanger sal either agree with the Profeft of the Burgh, in the best forme as he may; or else ilk mercat-day, sal pay to him ane halfe-pennie: *Leg. Burg. c. Quilibet 39.* And in the auld forme of customes, it is called, the stallenge of the mercat: And *Leg. Burg. c. Mercenarius 40.* It is called, *Stallum* or *Botha in Foro*.

Stringidint, *Leg. Burg. c. Scientum est 9.* Ane dint, or straike with ane sting or Barron: In Latine, *Fustigatio*.

Sterlingus; Est genus ponderis, ane kind of weicht conteining
 32. cornes, or grains of quheat, *vt in assisa reg. Da. de ponderibus*
 & mensuris. And in the Cannon law, mention is maid of five
 shillings sterling, and of ane marke sterling, c. 3. de Arbitris, c.
 Constitut. 12. de procuratoribus. And the sterlinc penny is swa
 called, because it weyis sa mony graines, as I have sondry times
 proven by experience. And be the Law of England, the penny,
 quhilk is called the sterling, round and without clipping, weyls
 32. graines of queat, without tayles, quhairof twenty makis
 ane ounce, and twelve ounces makis ane pound; and aucht
 pound makis ane galloun of Wine: And aucht gallounes, makis
 ane buschel of London, quhilk is the aucht part of ane
 quarter. Anno 17. Edward 2. cap. 19. The quhilk cuinzie was
 meikle used within this Realme, as is manifest be auld Charters
 and evidentes. For the sexteene day of August, the zeir of
 God, 1395. Walterus Senescallus Dominus de Ralston, Vicecomes
 de Perith, impignoravit, Necnon nomine pignoris dedit, & concessit
 Nobili & potenti Dn. Dom. Roberto, Comiti de Fife & Men-
 teith, totam & integrum Baroniam suam de N. prouidentis mar-
 cis sterlincorum moneta Scotia, ipsi per eundem Comitem mutua-
 tam, & per manus plenarie persolutis. Tenet, & habet, ipsi Co-
 miti, & heredibus suis, de Domino Rege &c. Quoniamque dictus
 Walterus, Senescallus, aut heredes sui, prefato Domino Comiti, vel
 suis heredibus, ducentas marcas sterlincorum moneta Scotia uno
 die, inter solis ortum & occasum, in Ecclesia Parochiali de N. per-
 solverit, vel persolverint. Et praterea dictus Walterus omnes fir-
 mas, redditus, commoditates, & proficia, de dicta Baronia, medio
 tempore provenient, dedit & concessit, pro se & heredibus suis, pre-
 dicto domino Comiti, & heredibus suis, pro suo consilio bono, ipsi
 impenso, & impendendo. Faciendo inde annuatim, predictus Co-
 mes & heredes sui, Domino Regi servitia debita & consueta.

The quhilk Charter conteining the reversion, and also a do-
 nation of the profits of the lands, quhilkis were wedde-set,
 conforme to the practicque used and observed unto the time
 of King James the thrid, of gud memory, *vide Reg. es.*

Subuassoris, subvaluassores, base holders, or inferiour holders
 specially, they quha haldis their lands of Knichts. *Leg. Mal.*
Mal.

Mak. c. 4. Quon. at. c. Si aliquis 49. Af. reg. D. a. c. stat. 8. Quhair it is ordained, that ilk person quha is accused criminally, sal be judged be his Peere, or superior in estate and dignitie.

T

TA Y N T, vide Attaynt.

Tenementum, Is commonly taken for the property of ony lands, or immoveable gudes within Burgh, or without the famin. *Lib. 2. c. Dos duobus 19. c. Fieri autem 67. Liberum tenementum.* And the superior suld not have the Ward of the tenement perteining to his vassall being *Minor*: Nor can crave na service nor relieve fra him, being *Minor* or *Major*, except he first receive his homage. *Lib. 2. c. Pradictis 60.* In the quhilke signification, it is commonly used in the Lawes of England.

Terre Dominicales, Ane word commonly used in Charters and indentments, quhilks are called ane Maines, or demaine lands laboured and occupied be the Lord, and proprietar of the famin: From the French word, *Domaine, Domanius, or Demanum*: Quhilke word properly signifies the Kingis lands perteining to him in propertie. *Quia dominium definitur illud quod nominatum consecratum est, unitum & incorporatum Regie Coronae, ut scribit Choppinus de domanio Francia. Tit. 22. per l. Si quando 3. C. de bon. vacanc. lib. 10. Et Mathem de Afflictis in Constitut. Sicilia, lib. 1. Tit. de locatione dominis 82.* quhilke may be called, *Bona incorporata, & in corpus fisci redditua.*

Thanus, Is ane name of dignity, and appears to be equal with the sonne of ane Earle. For the *Cre* of the ane, and the uther is alike. *Lib. 4. c. Si quis calumnietur 28. statut 64.* And *Thanus* was ane Free-halder, halding his landes of the King. *Quoniam attacchia. c. Recordatio 63. Assisa Regis. David. c. Recordatio 17. stat. Alexandri. cap. Recordatio 26.* And gif ane man not taken with the fang, is accused of thiefe,

and

and na sufficient probation is deduced against him, hee suld purge him be the aith of twenty seven men, or of three Thanes, *Lib. 4. c. Si quis calumnietur 28.* *Thanagium regis*, signifies ane certaine part of the Kingis lands or propertie, quhairof the rule and government perteinis to him, quha therefore is called *Thanus*. For *Dominia regis*, & *Thanagiare regis* idem significant. *Aff. reg. Da. c. statuit Dominus 38.* It is ane Dutch word, for *teiner* signifies ane servand, and *teinen* to serve: And *Thane* is likewise ane servand, and *Uter-thane* ane inferiour servand or subject. *vid. Leg. Britonum verbo Thanus.*

Theme, *lib. 1. c. 3.* is power to have servandes and slaves, quhilk are called *nativi*, *bondi*, *villani*, and all Barrons infect with *Theme*, hes the same power: For unto them all their bond-men, their bairnes, gudes, and geare properly perteinis, swa that they may dispone thereupon at their pleasure, *lib. 2. c. Consequenter 13. cum seqq.* And in summe auld authenticke buikes it is written, *Theme, est potestas habendi nativos, ita quod generationis Villanorum vestrorum, cum eorum carallis, ubi cunque inveniantur, ad vos pertineant.* *Theme* cummis fra than, *id est*, *servus*, and therefore sum-times signifies the bond-men and slaves, conforme to ane auld statute and law. *De curia de Theme.* *Quod si quis teneat curiam de Theme, & illa querela in illa curia moveatur, ad quem Theme vocantur: non debet illa curia elongari, sed ibidem determinari, & omnes Theme ibi comparantur.* Quhilke is understand of the question of liberty, quhen it is in doubt, quhider ony person is ane bond-man, or free-man: Quhilke kinde of processe suld not be delayed, bot summarly decided. Quhairof there is twa kindes: for either ane free-man is alleaged to be ane servand and slave, or ane quha is in servitude, desiris to be maid free, and put to libertie. *Dict. cap. 13. c. 14.*

Thift-bore, *vide Bote.*

Timbrellum, Tumbrellum, ane kind of torment, as stockes, or jogges, quhair-with craftes-men, sik as browsters are punished. *Leg. Burg. c. Si aliquis 21.* quhair it is called, *Castigatorium.*

Toll, *lib. 1. c. 3.* *Custome*, from the Greeke word of the samyn significata.

signification *re^{ar}o*. He quha is infest with Toll, is custome free, and payis na custome: quhilk is manifest be findry auld buikes: quhair it is written. *Tol. b. c.* *Quod vos & homines vestri, de toto homagio vestro sint quieti de omnibus mercantius, & de tolneto de omnibus rebus emptis & venditis.*

Mair-over, all Earles, Barrons, Knichts, vassals, life-renters, Free-halders, and al quha hes lands *nemine eleemosyne*, suld be quit and free, fra payment of Toll and custome within Burgh; in bying meate and claith, and uther necessair things to their awin proper use. Bot gif ony of them be commoun merchandes, they suld pay thol and custome; Albeit they have als great liberty as Barrons. *Dejudic. c. 3. leg. Forest. cap. Comites 13.* And in the auld Briton Lawes of King Edward, it is written *Thothit, quod nos dicimus Tholoneum, est quod ita infodatus habeat libertatem emendi & vendendi in terra sua.*

Torrailum, Thoralium, à torrendo, is called ane Kill, quhair cornes are dried. *Leg. Burg. c. Si quis 53. De combustione domus aut torralii:* Of the burning of the house, or Kill. Gif ane servand burne raklefly thy house, Kil, or nichtbours house adjacent, he suld not be punished, bot tinis his service. Bot gif ony man hiris ane Kil, and it burne, he sal pay bot the hire. Bot gif he borrowis it, and it burne, he fall pay the value of it to the party skaithed, *vid. Jam. 1. p. c. 71. cum seqq.*

Tort, Et non reason, un-reason, wrang, and unlaw. Stat. Rob. Br. cap. Item quod nulla 17. Tort in the French tongue, is wrang or injury: Unlaw cummis fra On, Privativa particula apud nos & Germanos, eodem modo quo in, apud Latinos, and Law, or lauch, id est lex: Quasi sine lege, vel contra legem, vel quod non jure sit. Jus Normand. Lib. 12. c. 1. Actiones of wrang and unlaw, appears to be civil actiones, and are opponed to actiones criminal, touching life and lim. *Stat. Alex. c. si quis 9. cum seqq. leg. Mal. Mak. c. 4.*

Tocheoderache, ane office or jurisdiction, not unlike to ane Bailliery, specially in the Iles and Hie-lands. For the 9. Mart. 1554. *Neill Mack neill*, disponed and annalied to *James Mack Oneil*, the lands of *Gya*, and uthers, with the *Toschodairach* of *Kintyre*. Some alleagis it to be ane office perteining to execution

cution of summondes. *Lib. 1. cum autem. 8.* *Quon. attach. c.*
Si aliquis 49. Sik as ane quha summondis, attachis, or arreis-
 stis ane uther, to compeir before ony Judge. *Stat. 2. David. c. 6.*
 Uthers understandis the same to be ane Crowner. *Lib. 4. cap.*
Rapuis 9. Last, sum understandis it to be ane searchour, and ta-
 ker of thieves and limmers: For King *Evenus* did statute, that
 in sindry Schireffedomes, there suld be sindry searchours of
 thieves, rievers, and of them that lyis in wait in hie streets, and
 common passages. *Heclor Boetius, lib. 2. 10.* *Aberrans, inquit,*
Pecus, aut Domino furum indagatori (Tochederauch vulgus ap-
pellat) aut Sacerdoti redditio: quod si triduum apud te retinueris,
*furti reuers esto: In the Civil Law, they are called, Latruncula-*res. 1. Solemus 16. ff. de Indic.**

Timbria Pelliun, leg. Burg. c. Capitulum. 13 8. Ane Timmer
 of skins: That is, swa mony as is included within twa broddes
 of Timmer, quhilk commounly conteiniſſis fourty skins: In the
 quhilk maner, merchandisusis to bring hame Martrick, Sable,
 and uther coastly skins and Furrings.

Timbrelius, Dicitur parvus Cetus, ane little Quhaile. Leg.
Forest. c. Siquis cetum 17. de Judic. c. 27.

Tinnelius, de judic. c. 27. leg. Forest. c. Si quis Cetum 17. The
 sea-mark, utherwaiſes in English, Tyde-mouth. That is, the far-
 reſt part quhair the ſea-tyde flowis. *Litus quo scilicet fluxus*
bybernum maris maximus excurrit, hoc eſt, quantumcunque mare
aliquo tempore plus exceduntur in hyeme vel aſtate, tantum eſt lit-
tus eius. Soſt. Flumina. Et ibi Gl. Inſtit. de ter. diviſi.

Traſtis, Jam. 3. p. 14. c. 99. Signifies ane Roll or Catalogue,
 conteineand the particular dittay, taken up upon malefactours
 quhilk with the portuous is delivered be the Justice Clerke to
 the Crowner, to the effect the persons, quhais names are con-
 tained in the portuous, may be attached conforme to the dit-
 tay, conteineid in the traſtis. For like as the portuous com-
 prehends the names of the persons indited: swa the traſtis con-
 tainis the kinds of dittay, given up upon them quhilk is swa
 called, because it is committed to the traſt, faith and credit of
 the clerks and Crowner, quha gif they be truſy & faithful, ſuld
 nocht reveale, deleet, change, or alter the ſamin. *Ja. 2. p. 6. c. 28.*

Tribula,

Tribula, leg. Burg. c. 8i homo 16. Ane Flaire quhairwith corn is thresher, A terendo, quod frumentum terat. Like as *Tribulus* is called an *Thrissil*, and *Tribulum* ane *Pestel*, quhairwith spices or ony uther thing is brayed in ane morter: *Barbare magis quam Latine, secundum usitatum versum à puoris in scholis decantatum: Tribulus thressil la flail, tum quoque pestell.*

Tuernay, Quid sit, valde ambigo, & hic aliorum avidè expello judicium. In the Burrow lawes, cap. *Quilibet 34. Si uxor aliqui- jus fuerit calumniata de aliquo, in placitis Burgorum nimirum Tuernay:* That is, as in the auld English buik, the husband may do richt for his wife, in Courts of Burgh. *Et de judic. cap. cum quan- do 28. Si quis fuerit implacitatus coram justitiario domini regis, vel alio baliivo, si dominus ejus, vel ejus Ballivus venerit & alle- gaverit pro ipso in debita hora, potest recuperare curiam domini sui.* *Et si per negligentiam suam responderit & dixerit tuentynay de omnibus fibi oppositis planè respondebit, & sic amittit curiam Domini sui.* In quibusdam libris legitur *Twentynay.* Itaque conjicio esse antiquum verbum forese, quo reus utens, intelligitur appro- basse judicem, adeo ut cum postea declinare non possit.

U

VADIMONIUM, *Vadimonium*, from ane auld word *ve ddum*, used in Britton Lawes: In Latine, *Pignus*, in French, *Gage*, quhilk we cal ane *Wedde*. *Immobile vadim*, signifies immove- able gudes, sif as lands annalied and wed-set under reversion: The profits quhairot, *computantur in sortem*: That is, are comp- ted and reckoned within the stock. Swa that the famin being payed in sif quantity as extendis, and is equivalent to the quan- tity of the stock, and principal summe: Thereby the principal summe is esteemed, as compted and payed, quhilk is called *Mortuum vadim*, *vid. Mortgage*. Bot now the contrair is maist communly used in pratique of wed-sets and alienation of lands under reversion. And be the auld Law of this Realme, is called ocker and usury, and zit be the famin, was

permitted and tolerated, lib. 3. c. 6. Qahidder the commoun forme of wed-setting of lands now used under reversion, is leasum or unleasum. Vid. Ias. in L. cunelos populos C. de summa Trinitate. Et Ch. in Consuetud. Burgund. Rubric. 5. sect. 1, 2. In auld times, I find that quhen lands war wed-let, nomine pignoris, or ad immobile vadum: The profits and rents thereof were given and disponed be the annalier to the byer, for some certaine reasonable causes; as, pro consilio, vel auxilio impenso, vel impendendo; to the effect, that the byer bruikis the lands, ex dispositione legis. Swa he nicht have richt to the profits thereof, Ex pacto & conventione hominis, vid. Reversion. vid. Sterlingus, vid. Mortgage.

Vadiare duellum, lib. 4. c. 2. A vadum datione, to enact battell, as in the English Lawes, be giving of pledges, baith be the persewer and defendar before the Justice and his deputes. The persewer is said, *Vaduare duellum*: Quhen after leave asked and obtained from the King, he offers to proove in plaine field, al to be trew, quhilk he affirms, and to that effect, offeris ane wad or plege: And the defendar is understand to *vadiare duellum*, quhen he denies al quhilk is spoken be the persewer, and affirms the samin to be false and untrew; and thereto offeris his body to fight with him, and ane wad or pledge to that effect. *De judic. c. 61. c. 86.* Molinaus fil. cur. par. part. I. c. 16. Et author tractatus de Corona, Appellatus (inquit) defendet latrocini-um, feloniam, & totum factum per patriam, vel per corpus suum, secundum electionem suam, prout curia consideraverit, aut varda- verit. Si autem elegerit se defendere, per corpus suum: vadetur inter eos duellum. Et appellatus det Vadum defendendi, & appellans det vadum dizationandi. Bot Philippus Pulcher, King of France, discharged all singular combates, and al finding of pledges there-anent. Molinaus D. part. I. c. 10. *De duello*. In this Realme, the appealer and defendar castis their glooves til uther, quhilk representis the finding of the pledge.

Vagabund, is called properly, ane quha hes na certain dwel-ling place. Guido Papa quest. 202. per Gl. I. sect. 1. *Prator. ff. de damno infelio*. Quhilk is very specially declared in the act of Parliament. Iam. 6. p. 6. 20. Octob. c. 74.

Varda,

Varda, ane French word *Garde*, custodie or keiping: For we use the letter *W.* quhair the French-men usis the letter *G.* As *Wardaine*, for *Gardaine*, *Warderobe*, for *Garderobe*: *Warren* for *Garen*. And the ward custody, and keiping of the aire, haldand his lands be service of ward and relieve, perteinis to his immedeate superior, quhilk is conforme to the Lawes of Normandy. *Lib. 5. c. 10.* Quhair-anent thir rules after following fuld be observed and worthy to be noted.

1 The ward and custody of lands, halden be service of The ward per-
ward and relieve perteining to ane aire, being *Minor*, and of teinis to the
leffe age, aucht, and fuld perteine to the Over-lord and su-
perior of the saidis lands, quha within the time of the ward,
may present Ecclesiastical persons to Kirks vaikand: fuld su-
stein honestly the aire, and fuld not only pay the debts, aucht-
and to the defunct: Bot also aske and crave all debts aucht-
and to the defunct, or to the aire, and persew and defend all
actions competent to him: Bot he may not destroy nor anna-
ly ony part of the lands. *Lib. 2. cap. Plenam 42. c. Restituerit.*

44. *vid. Relevium. vid. Hawbert.*

2 Touching the custodie and keiping of the person of the aire of ward lands, or of ony uther lands, or quhat sum-ever maill or femaill, gotten or borne in lauchfull mariage: the famin perteinis to the mother, after the decease of the father, untill the bairne be of the age of seven zeires compleit, conforme to the commun practicque of this Realme, and the Civiall Law. *L. 1. & Tot Tit. ff. ubi Pupil. educar. debeat.*

The keiping of
the bairns per-
teinis to the
mother.

For bethe Law of this Realme, grounded upon the Clima-
sterick zeires of *Septenarius & Ternarius*: That is, of seven and three zeires: there is three kinds of age. The first of seven zeires, during the quhilk time the bairnes are in custody of their parents. The second is, of fourteen zeires, after the quhilk time, ane air may enter to his lands, annaly and dispone the famin, as he pleasis. And before the quhilk time, na person may be indited to the Justice aire, or accused of life and limme, *leg. Forroft. cap. Not a quod 15.*

Three kindes
of age.

3 The keiping of the aire being *Minor*, haldand lands of the King, perteinis to him allanerly, albeit the said aire have reis to the uther King.

uther superiours of uther ward lands, elder and prior in time to the King : *Quia rex nullum potest habere parem, mulio minus superiorem in suo regno* : Bot gif ane aire haldis lands, nomine *Burgagii* of the King : And uther lands nomine *warda* & *relievii*, of ane uther superior, priour, or posteriour to the King, the Custody and keiping of the said aire, perteinis not to the King, bot to the said superior, *Quia ratione Burgagii Dominus Rex non prefertur aliis Dominis capitalibus in custodia, lib. 2. c. Notandum 45.*

The keiping of the aire perteinis to his superior.

4 After the outrunning of the seaven zeires, and the aire beand of that age, haldand lands of ward of ane superior, and having na lands be reason of ward of the King, the superior suld be preferred, anent the person of the aire to the mother, Gud-schir, tutour, zea, to the King himselfe, and all uther persons, 16. *Julii 1531.* Pen. *Julii 1532.* The Abbot of *Abirbrothok*, contrair *Marion Forbes*, 28. *Julii 1529.* *James Sandie-lands of Calder*, contrair *Edward Sinclair*.

The eldest superior is preferred to all uthers.

5 The custody and keeping of the person of ane aire, havand lands halden of diverse superiors, be ward and relieve, perteinis to the eldest superior, to quhom the first homage was made: Or of quhom hee hes the eldest and first infestment, or forme of halding. For albeit, ilk ane of the superiours hes the ward of the lands halden of himselfe: zit concerning the keiping of the person of the aire, the principall and eldest superior, is preferred to all uthers, *lib. 2. c. Restituere 44.*

The superior is preferred to the tutor.

6 The keiping of the aire havand lands blench, or in few-ferme, and also ward-lands, perteinis to the superior, be reason of the ward, and not to the tutour, havand intromission with his blenche or few-lands.

The keiping of the aire, fol-
lowis the richt
of the mariage.

7 Gif the superior, havand the richt and title to the ward and mariage of ane aire, disponis the ward to ane donatar, and the mariage to ane uther: The donatar to the mariage allaner-ly, suld be preferred in keiping of the person of the said *Minor*, to the uther donatar of the ward, and all uthers: *quia jus ma-ritagii est personale, & sequitur personam.*

The keiping of the aire, suld
not be given to
his appearand.

8 The keiping of the aire, suld never be committed to him, quha may claime, or claimis ony richt to his lands and her-
age:

tage : Or may immediatly succeed after him thereto. *Lib. 2. c. 24. cap. 47.* *Hac enim ratione illi posset praberit occasio captandæ mortis ipsius hereditatis, quod est periculum & impium.*

9 Be the laws of this Realm, the aire mail, and all his lands The end of
the ward. halden ward, are within ward and keiping of his superior, untill he be of the age of twenty ane zeires. And the aire fe-mail, untill sche be of the age of fourteene zeires. *Mar. par. 3. cap. 5. lib. 2. c. 39. de iudic. c. 65. c. 121.* Because the lands pertaining to the aire maill, are subiect to the King or uther superior be service, quhilk the *Minor*, be reason of his leffe age and zouth-head, cannot doe. And therefore the King or superior, wantand the service, hes recourse to the land : that he may be served be the profits thereof, taking up to his awin use, or be ony person to quhom he pleasis to dispone the samyn, untill his vassall be of perfite age, and able to serve. And the aire fe-mail is in the ward and keiping of her superior, untill sche be fourteen zeires of age as said is. For suppose ane woman of twelve zeires of age, be the civil law, may marry an husband, zit be the law of this Realme sche may not marry, until sche be fourteen zeires compleit : At the quhilk time sche may lauchfully marry, with consent of her superior. *Lib. 2. c. 48. cap. in Custodiis 90.* And therefore sche being subiect to her husband, It is not reason sche suld be alto subiect to the ward of her superior : and consequently under twa wards, and twa snydry severall powers. Mair-over, sche being maried, with consent of her Over-lord, her husband may doe sik service, as suld be done to him be the possessor of the lands, quhilk is conforme to that quhilk is written be Doct. *Thomas Smith*, of the commoun weill of England, *lib. 3. c. 5. c. 8.*

Varda curia, Quoniam atque ubi aliqua 10. cap. in omni 18. c. nullus 20. The interloquutor or decret of the Court : *Curia dicitur varda, considerare, pronunciare, in this forme.* The Court counselled and advised. And *I. N. Sotytor* of it, be their informations saith, that this Court counsels, and *I.* a ward, that *N.* is in ane default for his absence this day. The like forme is used in the daily practicque, quhen the Judge or Clerke, be the mouth of the officiar or dempster decernis and adjudges ony

ony person to be in ane unlaw, for absence or ony uther cause. And lib. 2. c. ult. that quhilke is called *veredictum assise*, in the samyn place, in libro *Carbreith*, is called the waird, veredite, or deliverance of the assise.

Varenn, ane French word, ane *Garene*. That is, ane place quhilke is dyked and inclosed for beastes, Cunnings, or uthers, Quon. attack. cap. 29. Mod. ten. cur. cap. 21. In Latine, *Paradisus*. And the keiper of ane Cunningar or Cunnings, is called ane *Garenter*. *Infedatus in liberam varennam*, is nocht meikle different from infestment, in *liberam forestam*. The quhilke kind of infestment of auld is given to the Laird of *Rosling* his predecessours, of the Barrony of *Pechtland*.

Ware, wair of the sea, ane word used in sindry infestments: in Latine, *alga maris*. As in the Latine proverb, *abjecta vilius alga*. He quha is infest therewith, may stop and make impediment to all uther persons, als weill within the floud-mark, as without the samyn, to gather wair for mucking and guding of their lands. Or to gather wilkes, Cockles, Lempets, Mussels, sand-eiles, small fish, or baite, upon the sand or craiges, foreanent his lands, 24. Maii 1549. The towne of *Carrai*, contrair *Griffell Meldram*. Utherwaies, gif ony person be not infest with sik priviledge, he may na-waies forbid, trouble or molest the King, or ony of his lieges to doe the premisses: Or to win staines, quarrel, or to exerce ony uther industry to their awin profit and commodity, within the floud-mark of the sea. *Quia usus maris est communis omnium* 29. *Julii 1500*. The King, contrair the Laird of *Seafeild*. *Ware* cums fra ane auld French word, *Varech*, used in the lawes of Normandy, lib. c. ult. Quhilke signifies ony guds or geare, cassen out be the sea to the land, quhilke properly we call the wrak of the sea.

Vassallus, *quasi bassallus*, *inferior socius*. From the French *Bas*, as *plus Bas*, in Latine *inferior*; And the Dutch word, *Gesel*: in Latine *socius*. For the vassall is inferior to his Maister, because he suld serve and reverence him: And zit hee is in ane maner companion to him, because ilk ane of them is mutually oblished till uthers. *Vid. affidatio*, & *Cuius lib. 1. de feud.* writes that *leudes, leodes, fideles, homines nostri, feudatarii, ministeriales, beneficiarii*,

scisoris, beneficiarii, vassallus, almost signifies ane thing: And *vassallus*, in Latine is *clivus*: Because his relation is betwixt *dominus* & *vassallus*, as is betwixt *patronus* and *clerus*. *Melitene* in *stili cur.* part. i. 16. pag. 48. Albeit *Cujacius* affirmis the *samin* to be mony waies different. And ane *Bas* infestment is quhen the vassal annalies his lands haldan of himself and his aires, quhilk is ane inferiour, private or subalterne infestment. In the lawes of the fewes, *vassallus* is called *fidelis*, *quia fidelitatem jurat*, he suld sweare to be faithfull and trew to his maister. Amanges vassals, the first place of dignite is given to them quha are *Duces, Marchionae, Comites*, and are called *Capitanei regni*. The second is granted to Barrons and uthers of like ranke and estait: And are called *Valvassores maiores*. The thrid, is of them quha are called Gentlemen or Nobles, haldand of Barrons, quha likewise may have under them vassals, also Gentlemen: For ane Gentleman may hald of ane uther. And his vassals haldand in thiese of Barrons, are called, *valvassores minores*: And they quha haldis their lands of them, are called, *vassalli, valvassori seu minimi valvassores*. lib. 1. de *feud.* Tit. de *natura feudi.* sect. I. Bot in the lawes of this Realme, they quha haldis of Barrons are called *milites*, and they quha haldis of them are called *subvassores*. vid. *Americanum*, vid. *Baro, & Jacob. Cujacium*. lib. 2. de *feud.* Tit. de *nominibus vassallorum*.

Waife beast, pecus vel animal aberrans, quhilk wanders and wavys without ane knawen maister, quhilk being fund be ony man, within his awin bounds, hec suld cause the *samin* to be proclaimed, diverse and sondry times upon mercat dayes, at the Paroch Kirk, and within the Schireffedome: [I]therwaies, gif he deteinis the *samin*, he may be accused for thief thereof. And it is leasum to the awner of the beast, to repeat and chalenge the *samin* within zeir and day. *Quon. attach. c. aforesa*. 30. vid. *Tasbeedenach*. In the lawes of France it is called *espave*, quo significatur omne illud quod aberrat. *Cheff. in consuet. Barundi. Rubric. I. sect. I. Verb. Espaves*. In Latine, *res pro derelicta habita*. I. *falsus 44 ff. defert*. vid. *de vassalibus* *definitio* *clarified*. *Weights, Measures, and diverso kindis thereof*, vid. *Serplash. Reade* likewise *Assisiam Regis David, de ponderibus & mensuris*.

Suris, Jam. 1. p. 4. c. 68, 69, 70. Ja. 1. p. 3. c. 57, 58. Ja. 6. p. 11. c. ult.
Venyon, ane word used in infestments, a venendo, *sen venatione*, and likewaies commonly used in the Lawes of England, and signifies licence and power to him, to take and slay of the Kingis Venison within his Parkes and Forrests: Quhilk utherwaies is not leasum, bot is sharply punished with an egriuous fine, or be banishment or prison, *leg. Forest. c. 91.* Quhilk is conformato to the lawes of England, *An. 9. Hen. 2. c. 10.* Bot be the disposition of the Forest laws, it is leasum to ane Erle, Bishop, or Barron, command or returnand throw the kingis Forest, at his command, to take ane or twa beasts, be the sight of the forester, gif he be present: and utherwaies he sal blow ane horne, that he appear nocht to take the samin thiefeously, *leg. Forest. c. 90.*

Verd, vert, from the Latine *viride*: ane word used in Charters and infestments, and also in the English lawes, quhair it is called *Grenebue*, & signifies power to cut green-trees or wood. And being committed be them quha haic nocht power to doe the samin, is punished be the forresters, or vierders, quha are called *Viridarii*, in the lawes of Normandy and England. Be the auld law of this Realme, all forrests commonly pertained to the King: and the richt of forestaty was given and disponed in thir words, *in liberam Forestam*, as is expounded in the word *Forest*. And ane of the privilidges or liberties, that is, *poteſtas secundi*, licence to hew or cut greene wood, was granted be the King, be infestment and disposition conteinand *Verb.* Quhilk liberty the King may grant within his haill forest, or ony part thereof, to ony person for fewell, or fire, bigging, or for ony uther particular use, quhilk person may not abuse the said forrest or wood, after his awin appetit and will, bot at the sight and discretion of the forester, and uther officiars, or according to the forme and maner set downe, and limitate in his infestment and gift, as writtis *John Pappone*, *lib. 4. Tit. 3.*

Secondly, this word *verb*, may be taken for power and licence of paſturge within the Kingis forrests, granted to him quha is infest therewith, quhilk in the English lawes is called, the commonoun of Herbage, and of uther things in the Kingis forrest, perteyning to them quha are accustomed to have the samin

famin. *Cart. de Forest. c. 1. Mag. Cart. Anno 9. Hen. 3. c. 8.* and juistment, herbage, agistamentum & herbagium, in Latine, jus pascendi pecoris, is quhair ane tennent hes right given to him of the feidng, grassing, or pastouring of his catell within ane Parke or ony uther ground inclosed.

Veredictum Assisa. vid. Proprietatis. vid. Varda.

Vergelt, ane Saxon or Dutch word, from Ver, id est, vir vel hamo, & Gelt, pecunia sive compensatio, as vergelt furio is threttie Kye, and ane quoyach. Lib. 4. c. de unoquoque 17. Or threttie three Kye. Stat. Alex. cap. de unoquoque 34. 1

Villenagum, à villano, sklavery or servitude. Lib. 2. c. Conquerenter. 13. vid. Bondagium.

*Vicinetum, from the French word Voisin, nichtbour, quasi vonsinum or Vicenetum, from vicinus, ane quha dwells neare unto ane uther, or in the four halves about, from the quhilk cummis the French word, used in the English lawes, Vicinage, and in the lawes of this Realme, *Assisa de vicineto*, is ane assise of nichtbours, or of the four halves about, vid. *Assisa*.*

Whitsondales. scilicet. Jam. 2. p. 14. c. Or Whitsundayes making. Jam. 9. in the same Par. cap. 90. Utherwales called Whitsundayes styles. Quhilkis were certaine constitutions and statutes quhilkis free-halders, baith spirituall and temporall, and specially convents of Abbayes and religious places, maid betwixt them and their tennents before Whitsunday, for service to be done to them, and better labouring of their lands, and payment of their dewtie.

Unlaw, vid. Amerciamentum, vid. Tort.

Unctum porcorum, swines seame or fatnesse. Leg. Burg. a sequis scienter 71. ab ungendo; because it is profitable for uncleans and smearing.

*Voth signifies Out-lawrie, *Urlagum*. And in our auld Scottish langage ane *Vonthman*, is ane out-law, or ane fugitive fra the lawes. Main-over, *Vonth* signifies pergewed, calling, or accusation, from *Voucher*, id est, *Vocare*, used in the auld French and English lawes.*

Wrang and unlaw, vid. Tort. To deny wrang and unlaw, quhilk the defender denyes that quhilk is objected to him, or

quhairof he is accused, and zit confesses that he lies done utherwaies, then he aucht to doe, and swa hes not done his dewtie, for the quhilk he is reddy to make amends and satisfie the party offended, *Leg. Burg. c. 101.*

Wreck of the sea, ane word specified in the lawes and fyndry infestments, quhilk signifies power, liberty, & prerogative competent to the K. or to ony person, to quhom the samis is granted be him be infestment, or ony uther disposition, to intromet & up-take sikh guds and geare, as schip-broken, or fallis to him be escheit of the sea : quhilk liberty is als competent and profitable to him quha is infest with wreck, as it mich be to the King himselfe giver theirof, *Quia ualita pertinens ad Dom. regem & uach a competens in sallo, ex donatione regis pari iure astimatur, I. Forstec. inter antiqua 56.* And in the lawes of England, *An. 3. Ed. 1. c. 4.* concerning wreck of the sea, it is statute, that quhair ane man, ane dog, ane cat, escapes quick out of the schip, that sikh schip or barge, nor nathing within hir, sal be adjudged wreck, bot the guds sal be saved and kelped be the siche of the Schireffe, Coronor, or the Kingis Baillie, and delivered into the hands of sikh as are of the towne, quhair the guds were fund, sa that gif ony craye the guds within ane zeire and ane day, after prufe, that they war his awin, they fall be restored to him without delay. And utherwaies they fall remaine to the King. And the Schireffes, Coroners, and Baillies of this towne intrometions therewith, sal be answerable therefore to the Kings officiars, and quhair wreck belangs to ane uther then to the King, he fall have it in manner abone expremed. And quha so-ever dois utherwaies, and is attaint or convict thereof, he sal be imprisioned, and pay ane fine arbitrall to the King, and the damage to the party. Slik-like be the lawes of England, the King suld have the wreck or escheit of the sea, throw-on the Realme, of Whales and great Sturgeons taken in the see, ane quhair within the Realme : except in certain places privyledged be the King, *An. 17. Ed. 2. c. 11.*

Utagium, vel utlagium, outlawry, rebellion, disobedience to the lawes, banishment, or forefaltour. *Jan. 2. p. 6. c. 30.* For gif the King restore *ex gratia*, ane man that is outlawed or forefaltor,

forefalked, he thereby recovers nocht his lands, bot be the god will of his over-lord, *Quia foris factum & uitagationem D. Rex damnatis soler remittere: nec tamen aliena Jura quaris nec potest infringere, lib. 2. c. foris factum, 55. de judic. c. si per legem 149.*

Y

Y BUR PAN AN S E C A, it appearis to be like that, quhilke is called the law of Birding sek, for in sum auld authentick buiks it is written, *lib. 4. c. 14. yburpan in secca. b. c. de furto. virtuti uehementis, vel quantum cibi, quis portare potest super dorsum suum curia non est tenenda.* Sum affirms in the Gascoin language *Pana*, to signifie furari, to steill, and *Panadour*, to be ane thief; and it appearis weill, *Seca* signifieth ane seck. In Latine *Saccus*, quhilke word is commonly used in all tonges and languages amangs all people and nations.

Z

Z A R D E. *Iam. 1. p. 7. c. 99.* Is ane kind of measure commonly used in England, nocht meikle different from our elne. Anz zaird of land *virgata terra*, in the Britton lawes, is ane measure of land, quhilke in diverse places is diverse, sumtimes of 20. aikers, sumtimes of 24. and sumtimes of 30. aikers.

Zelde, ane gift or donation, *vid. Herzelde.*

Zemſt, of ane Castel, the custody and keeping of ane Castel. *leg. Burg. c. 3.* For *Zeme*, in our auld language, is to observe and keepe, as quhen in time of singular battell, they quha stands by, and beholders are commanded to keepe, and *Zeme* the time of the derenzie, the weapons fra the hands of the appealer and defendor, *In lib. Feud.* It is called *Prorum Guardie*, in Latiffie, *custodia, & Guardiani custodes*, to quhom Castels and territories of lands are committed in keiping, quhom we call War-

daines, as writis the Interpretors of the Fewes, and specially, *Zafis de fendifis. Par. 12. N. 7.* And in this Realme lands, annuel-rents, or dewties given for keiping of Castels, are called *Castelwardia.*

F I N I S.



Anc Admonition to the Reader, touching
the Buiks conteinand the Lawes of this Realme,
and abbreviations used in the Treatise preceeding.

I Have alleaged in this little Treatise, the first word, with the number of the Chaptour of ilk buike of the auld Lawes of this Realme, written before King *James the First*, of gud memory. Because there is great diversity anent the number of the Chapters. Swa that thereby, there can be na siche or certaine allegation. Bot gif the number failzie, the first and capital word, wil be ane sure guide and convoy to the richt place alleaged.

Leg. Mal. Mak. Leges Malcolmi Mackenneth. The lawes made be King *Malcolme* the second of that name, very gud and profitable, bot few in number.

Lib. 1. lib. 2. lib. 3. lib. 4. The first, second, thrid, and fourth buiks of *Regiam Majestatem*, maid be King *David the first*. Swa called and intituled from the first word of the beginning therof, to the imitation of the fourbuikes of the Institutions of the civil lawes, quhilk beginnis *Imperatriciam majestatem.*

Quo. attach. Quonian attachmentis. Swa called fra the first word therof: conteiniis the Barron laws, and forme of the Barron court, written in the time of the said King *David the first.*

Mod. ten. cur. bar. Modus tenendi curias baronum. ane buike written in Scottish language, quhilk is not of great antiquity, as may be knownen be the style and language therieof, and is not conteined in the auld buikes maist worthy of faith and credit, alwaies it is ane interpretation of the buike, *Quonian attachmentis,*

menta, maid be sum man, quaha he ciked and augmented sindry things profitable for understanding of the forme of processe used in auld times.

Leg. Burg. leges Burgorum, The lawes of Burrowes, maid in the time of the laid King *David* the first, be relation and information of certain learned men, quhom he send to uther cuntries to learne and report to him the lawes and ordinances thereof, quhilk was done be them within the space of twa zeirs or thereby, as is plaine and manifest be auld authentike buikes. And it is probable that he hes used in like forme and proceeding, in making and furth-setting of the remanent his lawes.

Stat. Wilb. Statuta Wilhelmi, statutes and laws maid be King *William*.

Stat. Alex. statuta Alexandri, Statutes and lawes maid be King *Alexander* the second of that name, son to King *William*.

Stat. 1. Rob. Br. statuta prima Roberti Bruyse.

Stat. 2. Rob. Br. statuta secunda Roberti Bruyse. Quhilk statutes and lawes made be him are co-incident, and for the maist part conteiniis the like, or samin lawes.

Ass. Reg. Du. Assisa regis David: Lawes maid be King *David* the Bruyse, called King *David* the second: And in some buikes are called *statuta regis David*.

Stat. Rob. 3. statuta Roberti tertii: Statutes made be King *Robert* the thrid, father to King *James* the first, quhilk as zit remainis in the Register of this Realme.

Leg. Forest. leges Forestarum: The lawes of Forests, quhair of the Author is not knownen to me.

Iter Camer. Iter camerarii: The Chalmerlaine aire: quhilk as some alleagis, was written and put in forme, in the time of King *James* the thrid: Albeit the samin Courts were frequent and meikle used mony zeires before him.

De maritag. de maritago: An little treatise, written be some private man, and is na-wales authentick: It is so called, because the beginning thereof is, *De marito*.

Stat. Gild. Statuta Gilde, Certaine ordinances and constitutions touching Burgesses, gild-brether, maid and constitute be *Robert Durhame*, Maire of *Berwick*, *Simon Marchel* and

and uthers wise-men, inhabitants of the said Burgh.

Leg. port. leges portuum, ane Treatise collected and written by sum particular person, quhilk is not authentick, and containis the briefe summe and abridgement of the auld laws, and is swa called, because it containis the ordinances anent the customes of shippes, passand furth of this Realme, or arryvand to the samin, laiden with merchandise, and the forme of customes, baith outward and inward.

De judic. De judicibus, An lang and large Rapsodie, collected furth of all the buikes, containand the civil law of this Realme. It is not authentick, bot zit very profitable for expostion of sondry places of the principall and authentick buikes. It is swa called, be reason the beginning thereof is, *De judice eligendo*.

The actes of Parliament of King James the first, and his successours, are alleged be the name of the King or Queen, authour thereof: As *Ia.* for *James*, *Mar.* for *Mary*, *p.* for Parliament, and mair-over be the number of the Parliament and Chaptour.

Decrees given be the Lords of the Session and Councell, are alleged be the day, moneth, and yeir of God, in the quhilk they are pronounced, and sumtime be the names of the per-
fewer and defender.

Quhair ony thing is written in the exposition of ane word, quhilk may serve for the declaration of ane uther, for eschewing of unprofitable repetition, I remit you from the word to ane uther, be *vid.* for *vide*, and swa see and reade the exposition of the ane and the uther: For thereby ye shall be mair largely instructed.

F I N I S.

